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Standing committee
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Proceedings 1968-69 - No. 1-15



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HOUSE OF COMMONS

First Session—Twenty-eighth Parliament

1968-69

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STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. DONALD R. TOLMIE

PROCEEDINGS

No. 1-15

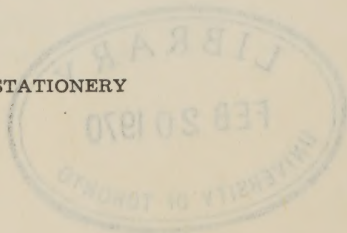
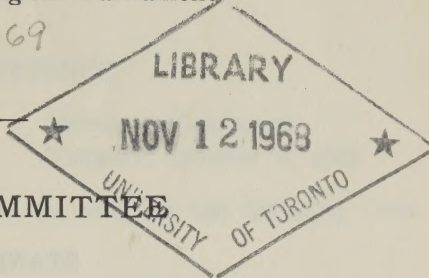
TUESDAY, OCTOBER 22, 1968

Including

APPENDIX A

Revised Main Estimates for 1968-69,
relating to
Correctional Services, the Royal Canadian Mounted Police
and the Solicitor General.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968



STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. Donald R. Tolmie

Vice-Chairman: Mr. André Ouellet

and Messrs.

Blair,

Brewin,

Brown,

Cantin,

Gervais,

Gibson,

Gilbert,

Hogarth,

MacEwan,

MacGuigan,

Marceau,

McCleave,

McQuaid,

'Murphy,

Rondeau,

Schumacher,

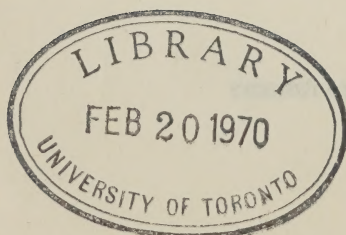
Valade,

Woolliams—(20).

(Quorum 11)

Fernand Despatie,
Clerk of the Committee.

¹ Replaced Mr. Chappell on October 15, 1968.



ORDERS OF REFERENCE

HOUSE OF COMMONS,
TUESDAY, October 8, 1968.

Resolved,—That the following Members do compose the Standing Committee on Justice and Legal Affairs:

Messrs.

Blair,	Gilbert,	Ouellet,
Brewin,	Hogarth,	Rondeau,
Brown,	MacEwan,	Schumacher,
Cantin,	MacGuigan,	Tolmie,
Chappell,	Marceau,	Valade,
Gervais,	McCleave,	Woolliams—(20).
Gibson,	McQuaid,	

TUESDAY, October 15, 1968.

Ordered,—That the name of Mr. Murphy be substituted for that of Mr. Chappell on the Standing Committee on Justice and Legal Affairs.

WEDNESDAY, October 16, 1968.

Ordered,—That, saving always the powers of the Committee of Supply in relation to the voting of public moneys, the items listed in the Revised Main Estimates for 1968-69, relating to Correctional Services, the Royal Canadian Mounted Police and the Solicitor General, be withdrawn from the Committee of Supply and referred to the Standing Committee on Justice and Legal Affairs.

ATTEST:

ALISTAIR FRASER,
The Clerk of the House of Commons.

MINUTES OF PROCEEDINGS

TUESDAY, October 22, 1968.

(1)

The Standing Committee on Justice and Legal Affairs met at 10.30 a.m. this day, for organization purposes.

Members present: Messrs. Brown, Cantin, Gervais, Gibson, Hogarth, MacGuigan, Marceau, McQuaid, Murphy, Ouellet, Schumacher, Tolmie (12).

Also present: Mr. Chappell, M.P.

The Clerk of the Committee opened the meeting and presided over the election of the Chairman of the Committee.

Mr. Ouellet moved, seconded by Mr. Schumacher,

—That Mr. Tolmie be elected Chairman of the Committee.

On motion of Mr. Ouellet, seconded by Mr. Brown, it was

Resolved,—That nominations be closed.

The question being put on the first motion, it was *resolved* in the affirmative. The Clerk of the Committee declared Mr. Tolmie duly elected Chairman of the Committee.

Mr. Tolmie took the Chair and thanked the Committee for the honour conferred upon him.

The Chairman called for motions for the election of a Vice-Chairman.

Mr. Hogarth moved, seconded by Mr. Gervais,

—That Mr. Ouellet be elected Vice-Chairman of the Committee.

On motion of Mr. Hogarth, seconded by Mr. Gibson, it was

Resolved,—That nominations be closed.

The question being put on the first motion, it was *resolved* in the affirmative. The Chairman declared Mr. Ouellet duly elected Vice-Chairman of the Committee.

The Chairman read the Committee's Order of Reference dated October 16, 1968.

On motion of Mr. Murphy, seconded by Mr. Marceau, it was

Agreed,—That the Committee print 750 copies in English and 350 copies in French of its Minutes of Proceedings and Evidence.

On motion of Mr. MacGuigan, seconded by Mr. Murphy, it was

Resolved,—That the items listed in the Revised Main Estimates for 1968-69, relating to Correctional Services, the Royal Canadian Mounted Police and

the Solicitor General be printed as an appendix to this day's Minutes of Proceedings. (*See appendix A*)

On motion of Mr. Gibson, seconded by Mr. Hogarth, it was

Resolved,—That the Subcommittee on Agenda and Procedure be comprised of the Chairman, the Vice-Chairman and three other members appointed by the Chairman after the usual consultations with the Whips of the different parties.

The Chairman indicated that the Subcommittee on Agenda and Procedure would meet in the near future to discuss the procedure to be followed by the Committee in considering its Order of Reference.

At 10.45 a.m., the Committee adjourned to the call of the Chair.

Fernand Despatie,
Clerk of the Committee.

APPENDIX "A"

SOLICITOR GENERAL

**Revised Main Estimates for 1968-69,
relating to**

**Correctional Services, the Royal Canadian Mounted Police
and the Solicitor General.**

SOLICITOR GENERAL

No. of Vote	Service	1968-69	1967-68	Change	
				Increase	Decrease
		\$	\$	\$	\$
	A—DEPARTMENT				
(S)	Solicitor General—Salary and Motor Car Allowance (Details, page 470).....	17,000	17,000		
1	Departmental Administration including administrative expenses of the Committee on Corrections plus such fees, salaries and expenses as may be approved by Treasury Board for members and the panel of consultants and staff named by the Minister to advise and assist the Committee, and grants as detailed in the Estimates (Details, page 470).....	1,266,000	1,021,650	244,350	
	SUMMARY				
	To be voted.....	1,266,000	1,021,650	244,350	
	Authorized by Statute.....	17,000	17,000		
		1,283,000	1,038,650	244,350	
	B—CORRECTIONAL SERVICES				
5	Administration, Operation and Maintenance including compensation to discharged inmates permanently disabled while in Penitentiaries and a contribution of \$25,000 to the Township of Brighton, Ontario towards the reconstruction of a road (Details, page 472)...	48,623,000	42,472,300	6,150,700	
10	Construction or Acquisition of Buildings, Works, Land and Equipment (Details, page 475).....	19,422,000	28,310,000		8,888,000
(S)	Pensions and Other Benefits (Details, page 476)	15,000	14,100	900	
—	Appropriation not required for 1968-69 (Details, page 476).....		1		1
		68,060,000	70,796,401		2,736,401
	SUMMARY				
	To be voted.....	68,045,000	70,782,301		2,737,301
	Authorized by Statute.....	15,000	14,100	900	
		68,060,000	70,796,401		2,736,401

No. of Vote	Service	1968-69	1967-68	Change	
				Increase	Decrease
		\$	\$	\$	\$
	C—ROYAL CANADIAN MOUNTED POLICE				
15	National Police Services, Federal Law Enforcement Duties and Provincial and Municipal Policing under Contract—Administration, Operation and Maintenance, including grants as detailed in the Estimates and authority, notwithstanding the Financial Administration Act, to spend revenue received during the year (Details, page 477).....	67,583,000	62,438,000	5,145,000	
20	Construction or Acquisition of Buildings, Works, Land and Equipment (Details, page 478).....	6,546,000	9,860,000		3,314,000
(S)	Pensions and other Benefits (Details, page 479)	12,400,000	11,063,729	1,336,271	
		86,529,000	83,361,729	3,167,271	
	SUMMARY				
	To be voted.....	74,129,000	72,298,000	1,831,000	
	Authorized by Statute.....	12,400,000	11,063,729	1,336,271	
		86,529,000	83,361,729	3,167,271	

Positions (man-years)		Details of Services	Amount	
1968-69	1967-68		1968-69	1967-68
			\$	\$
		A—DEPARTMENT		
		Approximate Value of Major Services not included in these Estimates		
		Accommodation (provided by the Department of Public Works).....	25,000	
		Accounting and cheque issue services (Comptroller of the Treasury).....	2,500	1,400
		Contributions to Superannuation Account (Treasury Board).....	17,900	91,800
		Contributions to Canada Pension Plan Account and Quebec Pension Plan Account (Treasury Board)....	2,400	11,900
		Employee surgical-medical insurance premiums (Treas- ury Board).....	6,600	300
		Carrying of franked mail (Post Office Department)....	6,900	
			61,300	105,400
		Statutory—Solicitor General—Salary and Motor Car Allowance		
		Salary.....(1)	15,000	15,000
		Motor Car Allowance.....(1)	2,000	2,000
			17,000	17,000
		Vote 1—Departmental Administration, including administrative expenses of the Committee on Corrections plus such fees, salaries and expenses as may be approved by Treasury Board for mem- bers and the panel of consultants and staff named by the Minister to advise and assist the Committee, and Grants as Detailed in the Esti- mates		
		DEPARTMENTAL ADMINISTRATION		
		Salaried Positions:		
		Executive, Scientific and Professional:		
1	1	Deputy Solicitor General (\$26,500)		
1		Senior Officer 3 (\$20,500-\$25,750)		
5	2	Senior Officer 1 (\$16,500-\$21,250)		
2		(\$16,000-\$18,000)		
9		(\$12,000-\$14,000)		
	2	Administrative and Foreign Service:		
		(\$16,000-\$18,000)		
5		(\$14,000-\$16,000)		
1		(\$12,000-\$14,000)		
1	2	(\$10,000-\$12,000)		
1	4	(\$8,000-\$10,000)		
	1	(\$6,000-\$8,000)		
		Administrative Support:		
4	2	(\$6,000-\$8,000)		
23	8	(\$4,000-\$6,000)		
4	6	(Under \$4,000)		
57	28			

Positions (man-years)		Details of Services	Amount	
1968-69	1967-68		1968-69	1967-68
			\$	\$
		A—DEPARTMENT (Continued)		
		Vote 1 (Continued)		
		DEPARTMENTAL ADMINISTRATION (Continued)		
(57)	(28)	Salaries.....(1)	454,000	316,000
		Travelling and Removal Expenses.....(2)	40,000	30,000
		Postage.....(2)	1,000	500
		Telephones and Telegrams.....(2)	10,000	7,500
		Publication of Reports and other Material.....(3)	10,000	2,600
		Professional and Special Services.....(4)	120,000	40,000
		Repairs and Upkeep of Equipment.....(6)	1,000	500
		Office Stationery, Supplies and Equipment.....(7)	39,000	20,000
		Acquisition of Furniture and Fixtures.....(9)	10,000	10,000
		Grant to the Canadian Corrections Association to assist in defraying the costs of a Congress of Corrections held in Canada in 1967.....(10)		5,000
		Grants to recognized After-Care Agencies as may be approved by Treasury Board.....(10)	500,000	455,850
		Grant to the Canadian Council of Juvenile and Family Court Judges to assist in defraying the costs of a conference held in Ottawa in September, 1967.....(10)		1,250
		Grant to the University of Montreal to assist in defraying the expenses of the 17th Annual International Course in Criminology held in Montreal in August, 1967.....(10)		5,000
		Sundries.....(12)	1,000	3,050
			1,186,000	896,650
		ADMINISTRATIVE EXPENSES OF THE COMMITTEE ON CORRECTIONS INCLUDING SUCH FEES, SALARIES AND EXPENSES AS MAY BE APPROVED BY TREASURY BOARD FOR MEMBERS AND THE PANEL OF CONSULTANTS AND STAFF TO BE NAMED BY THE MINISTER TO ADVISE AND ASSIST THE COMMITTEE		
		Salaries.....(1)	15,000	16,000
		Travelling Expenses.....(2)	4,500	24,000
		Telephones, Telegrams, and other Communication Services.....(2)	500	2,000
		Publication of Reports.....(3)	20,000	15,000
		Professional and Special Services.....(4)	39,000	63,000
		Office Stationery, Supplies, and Office Equipment... (7)	1,000	3,000
		Sundries.....(12)		2,000
			80,000	125,000
		Total, Vote 1.....	1,266,000	1,021,650
		Expenditure		
		1965-66.....\$ 302,176		
		1966-67.....609,600		
		1967-68 (estimated).....1,003,000		

Positions (man-years)		Details of Services	Amount	
1968-69	1967-68		1968-69	1967-68
			\$	\$
		B—CORRECTIONAL SERVICES		
		Approximate Value of Major Services not included in these Estimates		
		Accommodation (provided by the Department of Public Works).....	93,000	246,000
		Accommodation (in this Department's own Buildings)...	5,712,000	5,261,900
		Accounting and cheque issue services (Comptroller of the Treasury).....	345,700	218,200
		Contributions to Superannuation Account (Treasury Board).....	2,721,700	1,908,800
		Contributions to Canada Pension Plan Account and Quebec Pension Plan Account (Treasury Board)....	414,000	301,000
		Employee surgical-medical insurance premiums (Treasury Board).....	108,000	234,600
		Employee compensation payments (Department of Labour).....	45,400	52,300
		Carrying of franked mail (Post Office Department).....	14,500	11,200
			9,454,300	8,234,000
		Vote 5—Administration, Operation and Maintenance including compensation to discharged inmates permanently disabled while in penitentiaries and a contribution of \$25,000 to the Township of Brighton, Ontario towards the reconstruction of a road		
		ADMINISTRATION OF THE CANADIAN PENITENTIARY SERVICE		
		Salaried Positions:		
		Executive, Scientific and Professional:		
1	1	Commissioner of Penitentiaries (\$24,500)		
1		Deputy Commissioner (\$20,250)		
1	1	Director of Medical Services (\$21,000-\$23,000)		
		Administrative and Foreign Service:		
	1	(\$18,000-\$21,000)		
6	7	(\$16,000-\$18,000)		
7	3	(\$14,000-\$16,000)		
7	6	(\$12,000-\$14,000)		
12	9	(\$10,000-\$12,000)		
25	17	(\$8,000-\$10,000)		
4	10	(\$6,000-\$8,000)		
		Technical, Operational and Service:		
5	4	(\$10,000-\$12,000)		
8	4	(\$8,000-\$10,000)		
8	12	(\$6,000-\$8,000)		
		Administrative Support:		
4	4	(\$8,000-\$8,000)		
60	50	(\$4,000-\$6,000)		
12	19	(Under \$4,000)		
161	148			
(161)	(148)			
		Salaries..... (1)	1,235,000	1,168,000
		Travelling Expenses..... (2)	64,900	53,200
		Postage..... (2)	2,000	300
		Telephones and Telegrams..... (2)	10,600	10,600
		Publication of Departmental Report and Other Printing..... (3)	23,550	19,350
		Exhibits and Displays..... (3)	17,000	7,000
		Professional and Special Services..... (4)	352,000	112,000

Positions (man-years)		Details of Services	Amount	
1968-69	1967-68		1968-69	1967-68
			\$	\$
		B—CORRECTIONAL SERVICES (Continued)		
		Vote 5 (Continued)		
		ADMINISTRATION OF THE CANADIAN PENITENTIARY SERVICE (Continued)		
		Office Stationery, Supplies and Equipment.....(7)	22,550	30,950
		Sundries.....(12)	1,400	1,600
			1,729,000	1,403,000
		Expenditure		
		1965-66.....\$ 838,615		
		1966-67.....939,000		
		1967-68 (estimated).....1,403,000		
		OPERATION AND MAINTENANCE OF PENITENTIARIES INCLUDING COMPENSATION TO DISCHARGED IN- MATES PERMANENTLY DISABLED WHILE IN PENI- TENTIARIES AND A CONTRIBUTION OF \$25,000 TO THE TOWNSHIP OF BRIGHTON, ONTARIO TOWARDS THE RECONSTRUCTION OF A ROAD		
		Salaried Positions:		
		Administrative and Foreign Service:		
14	14	(\$18,000-\$21,000)		
12	12	(\$16,000-\$18,000)		
24	24	(\$14,000-\$16,000)		
15	10	(\$12,000-\$14,000)		
58	51	(\$10,000-\$12,000)		
228	228	(\$8,000-\$10,000)		
160	159	(\$6,000-\$8,000)		
33	20	(\$4,000-\$6,000)		
14	9	(Part Time)		
		Technical, Operational and Service:		
50	43	(\$8,000-\$10,000)		
1,126	1,091	(\$6,000-\$8,000)		
2,638	2,600	(\$4,000-\$6,000)		
		Administrative Support:		
45	35	(\$6,000-\$8,000)		
489	469	(\$4,000-\$6,000)		
4	4	(Under \$4,000)		
4,910	4,769	Continuing Establishment.....	31,042,000	27,050,000
(4,910)	(4,769)	Casuals and Others.....	947,000	541,000
(50)	(46)			
(4,960)	(4,815)	Salaries and Wages.....(1)	31,989,000	27,591,000
		Allowances.....(1)	50,000	20,000
		Travelling Expenses for Training of Officers and Other Administrative Purposes.....(2)	341,000	349,000
		Transportation Expenses of Prisoners and Dis- charged Inmates.....(2)	127,000	103,000
		Freight, Express and Cartage.....(2)	47,000	50,000
		Postage.....(2)	40,000	35,000
		Telephones and Telegrams.....(2)	94,000	79,000
		Advertising.....(3)	24,000	30,000
		Professional and Special Services.....(4)	1,371,000	1,394,000
		Maintenance of Federal Prisoners in Newfoundland..(4)	10,000	10,000
		Rental of Lands, Buildings and Railway Sidings....(5)	68,000	9,000
		Rental of Equipment.....(5)	8,000	5,000
		Rental of Films.....(5)	33,000	28,000
		Repairs and Upkeep of Buildings and Works.....(6)	617,000	524,000
		Repairs and Upkeep of Equipment.....(6)	517,000	406,000

Positions (man-years)		Details of Services	Amount	
1968-69	1967-68		1968-69	1967-68
			\$	\$
		B—CORRECTIONAL SERVICES (Continued)		
		Vote 5 (Continued)		
		OPERATION AND MAINTENANCE (Continued)		
		Office Stationery, Supplies and Equipment..... (7)	316,000	336,000
		Foodstuffs..... (7)	2,754,000	2,650,000
		Inmate Clothing..... (7)	867,000	637,000
		Officers' Uniforms..... (7)	599,000	597,000
		Fuel for Heating..... (7)	1,183,000	1,191,000
		Supplies for Operation of Farms..... (7)	291,000	275,000
		Hand Tools, etc..... (7)	265,000	
		Other Materials and Supplies..... (7)	1,286,000	1,391,000
		Municipal or Public Utility Services..... (7)	839,000	689,000
		Contribution to the Township of Brighton, Ontario towards the reconstruction of a road..... (10)	25,000	
		Inmate Remuneration and Disability Compensation..... (12)	1,017,000	1,052,000
		Sundries..... (12)	33,000	20,000
			44,811,000	39,470,000
		(Further Details)		
		Headquarters Planning Provision.....		2,398,590
		Atlantic Region.....	5,453,000	4,720,920
		Quebec Region.....	13,881,000	11,067,595
		Ontario Region.....	11,828,000	9,898,350
		Central Region.....	2,615,000	2,262,325
		Prairie Region.....	4,242,000	3,750,530
		Pacific Region.....	6,792,000	5,371,690
			44,811,000	39,470,000
			Expenditure	Revenue
		1965-66.....	\$ 26,601,430	\$ 686,063
		1966-67.....	37,115,000	786,000
		1967-68 (estimated).....	41,000,000	705,000
		PAROLE ACT ADMINISTRATION		
1	1	Chairman, National Parole Board (\$25,250)		
8	4	Member (\$22,000)		
		Salaried Positions:		
		Executive, Scientific and Professional:		
1	1	Senior Officer 1 (\$16,500-\$21,250)		
1		(\$14,000-\$16,000)		
1		(\$8,000-\$10,000)		
		Administrative and Foreign Service:		
1		(\$16,000-\$18,000)		
7		(\$14,000-\$16,000)		
1	8	(\$12,000-\$14,000)		
10	22	(\$10,000-\$12,000)		
23	74	(\$8,000-\$10,000)		
94	8	(\$6,000)\$3,000)		
		Technical, Operational and Service:		
1		(\$6,000-\$8,000)		
		Administrative Support:		
32	103	(\$4,000-\$6,000)		
84	11	(Under-\$4,000)		
265	232			
(265)	(232)	Continuing Establishment.....	1,792,000	1,441,000
	(4)	Casuals and Others.....		10,000

Positions (man-years)		Details of Services	Amount	
1968-69	1967-68		1968-69	1967-68
			\$	\$
		B—CORRECTIONAL SERVICES (Continued)		
		Vote 5 (Continued)		
		PAROLE ACT ADMINISTRATION (Continued)		
(265)	(236)	Salaries and Wages.....(1)	1,792,000	1,451,000
		Travelling Expenses.....(2)	90,000	57,500
		Freight, Express and Cartage.....(2)	1,000	1,000
		Postage.....(2)	3,000	2,000
		Telephones and Telegrams.....(2)	60,000	31,000
		Publication of Departmental Reports and Other Material.....(3)	6,000	5,000
		Professional and Special Services.....(4)	34,000	3,000
		Rental of Equipment.....(5)	16,000	
		Repairs and Upkeep of Equipment.....(6)	5,000	
		Office Stationery, Supplies and Equipment.....(7)	74,000	47,000
		Sundries.....(12)	2,000	1,800
			2,083,000	1,599,300
		Expenditure		
		1965-66.....\$ 869,296		
		1966-67.....1,294,000		
		1967-68 (estimated).....1,707,000		
		Total, Vote 5.....	48,623,000	42,472,300
		Expenditure Revenue		
		1965-66.....\$ 28,309,341 \$ 686,063		
		1966-67.....39,348,339 786,000		
		1967-68 (estimated).....44,110,000 705,000		
		Vote 10—Construction or Acquisition of Buildings, Works, Land and Equipment		
		Construction or Acquisition of Buildings and Works.....(8)	17,292,000	26,010,000
		Acquisition of Equipment.....(9)	2,130,000	2,300,000
			19,422,000	28,310,000
		Expenditure		
		1965-66.....\$ 28,173,366		
		1966-67.....20,190,000		
		1967-68 (estimated).....26,300,000		
		(Further Details)		
		Headquarters.....	17,000	
		Atlantic Region.....	1,100,000	1,552,365
		Quebec Region.....	6,011,000	9,999,055
		Ontario Region.....	9,146,000	11,396,210
		Central Region.....	790,000	1,019,960
		Prairie Region.....	647,000	2,318,620
		Pacific Region.....	1,711,000	2,023,790
			19,422,000	28,310,000

Positions (man-years)		Details of Services	Amount	
1968-69	1967-68		1968-69	1967-68
			\$	\$
		B—CORRECTIONAL SERVICES (Continued)		
		Statutory—Pensions and other Benefits..... (1)	15,000	14,100
		Expenditure		
		1965-66..... \$ 12,744		
		1966-67..... 14,970		
		1967-68 (estimated)..... 15,000		
		Appropriation not required for 1968-69		
		To authorize payments in the current and subsequent fiscal years to or on behalf of Frank Newton and Norman Newton in respect of personal injuries sustained by them in an explosion at North Surrey, B.C. on December 23, 1966,		
		(a) in the case of Frank Newton, in an amount equal to the amount that would be payable under the Government Employees Compensation Act if the Act were applicable less any amounts payable in respect of the injury by any insurance plan under which he was insured; and		
		(b) in the case of Norman Newton, in an amount equal to such part of the amount that would be payable under the aforementioned Act if the Act were applicable as is determined by the Workmen's Compensation Board of British Columbia to be required for his medical aid and rehabilitation less any amounts payable in respect of the injury by any insurance plan under which he was insured..... (12)		1
		C—ROYAL CANADIAN MOUNTED POLICE		
		Approximate Value of Major Services not included in these Estimates		
		Accommodation (provided by the Department of Public Works).....	2,319,700	2,318,000
		Accommodation (in this Department's own buildings).....	2,121,000	1,750,300
		Accounting and cheque issue services (Comptroller of the Treasury).....	643,500	581,500
		Contributions to Superannuation Account (Treasury Board).....	591,700	436,800
		Contributions to Canada Pension Plan Account and Quebec Pension Plan Account (Treasury Board)....	130,600	105,900
		Employee surgical-medical insurance premiums (Treasury Board).....	147,300	329,400
		Employee compensation payments (Department of Labour).....	6,000	5,600
		Carrying of franked mail (Post Office Department)....	124,200	82,500
			6,084,000	5,610,000

Positions (man-years)		Details of Services	Amount	
1968-69	1967-68		1968-69	1967-68
			\$	\$
		C—ROYAL CANADIAN MOUNTED POLICE (Continued)		
		Vote 15—National Police Services, Federal Law Enforcement Duties and Provincial and Municipal Policing under contract—Administration, Operation and Maintenance, including grants as detailed in the Estimates and authority, notwithstanding the Financial Administration Act, to spend revenue received during the year		
		Salaried Positions:		
		Administrative and Foreign Service:		
1	1	(\$16,000—\$18,000)		
1	1	(\$12,000—\$14,000)		
2	2	(\$10,000—\$12,000)		
19	6	(\$8,000—\$10,000)		
5	12	(\$6,000—\$8,000)		
1	6	(\$4,000—\$6,000)		
		Technical, Operational and Service:		
1		(\$10,000—\$12,000)		
1	1	(\$8,000—\$10,000)		
11	18	(\$6,000—\$8,000)		
190	101	(\$4,000—\$6,000)		
31	124	(Under \$4,000)		
		Administrative Support:		
14	4	(\$6,000—\$8,000)		
381	829	(\$4,000—\$6,000)		
1,158	529	(Under \$4,000)		
		Prevailing Rate Positions:		
		(Full Time)		
153	134	Local Assistance Abroad:		
		(Full Time)		
47	39			
2,016	1,807			
(2,016)	(1,807)			
		Salaries and Wages.....(1)	6,933,000	6,700,000
		Civilian Allowances.....(1)	40,200	36,948
		Pay of the Force—		
		Members of the Force.....(1)	66,423,135	60,580,630
		Special Constables and Employed Civilians.....(1)	622,500	679,876
		Allowances to Members of the Force.....(1)	1,875,800	1,151,792
		Membership Fees.....(1)	20,000	18,953
		Removal Expenses.....(2)	1,841,125	1,429,891
		Travelling Expenses—Investigational.....(2)	2,151,725	1,899,490
		Freight, Express and Cartage.....(2)	259,450	226,025
		Postage.....(2)	213,000	182,000
		Telephones, Telegrams and other Communication Services.....(2)	849,286	637,420
		Publication of Departmental Reports and other		
		Material.....(3)	44,850	55,940
		Advertising.....(3)	64,800	64,100
		Professional and Special Services.....(4)	671,000	308,712
		Protection and Security—Corps of Commissionaires.....(4)	821,700	691,827
		Medical Services.....(4)	1,046,000	925,000
		Rental of Land, Buildings and Works.....(5)	1,805,550	1,533,871
		Rental of Equipment.....(5)	466,350	410,469
		Repairs and Upkeep of Buildings and Works.....(6)	645,000	593,700
		Repairs and Upkeep of Equipment.....(6)	2,221,300	2,207,585
		Office Stationery, Supplies and Equipment.....(7)	692,230	967,000
		Materials and Supplies.....(7)	959,664	763,635
		Coal, Coke, Wood and Fuel Oil.....(7)	367,450	349,725
		Clothing.....(7)	1,495,210	1,600,000
		Fuel for Mechanical Equipment.....(7)	2,129,975	1,974,000
		Light, Heat, Power, Water and Gas.....(7)	885,800	832,637

Positions (man-years)		Details of Services	Amount	
1968-69	1967-68		1968-69	1967-68
			\$	\$
		C—ROYAL CANADIAN MOUNTED POLICE (Continued)		
		Vote 15 (Continued)		
		Mess Ration Allowance.....(7)		400,000
		Grant to the Canadian Association of Chiefs of Police.....(10)	1,000	1,000
		Grant to the Royal Canadian Mounted Police Veterans' Association.....(10)	1,000	1,000
		Grant to the International Association of Chiefs of Police.....(10)	500	500
		Sundry Investigation Expenses.....(12)	2,538,900	2,510,974
		Sundries.....(12)	27,500	25,300
			98,115,000	89,760,000
		Less—Estimated Recoverable Costs—Policing Agreements, Rations and Accommodation, etc..(13)	30,532,000	27,322,000
			67,583,000	62,438,000
		(Further Details)		
(800)	(722)	Departmental Administration.....	5,445,000	4,984,000
(1,519)	(1,470)	Divisional Administration.....	13,266,722	13,366,000
(2,925)	(2,788)	General Detachment Policing.....	26,962,790	24,247,000
(1,266)	(1,142)	Municipal Policing.....	8,896,363	8,294,000
(727)	(676)	Highway Patrol.....	5,904,786	5,587,000
(2,650)	(2,480)	Federal Law Enforcement.....	22,161,593	19,659,000
(730)	(706)	Training.....	6,315,539	5,550,000
(548)	(530)	National Police Services.....	4,195,059	3,281,000
(155)	(160)	Police Services for Other Federal Departments.....	1,113,941	1,055,000
(73)	(73)	Air Services.....	1,407,410	1,316,000
(250)	(255)	Marine Services.....	2,445,797	2,421,000
(11,643)	(11,002)		98,115,000	89,760,000
		Less—Estimated Recoverable Costs—Policing Agree- ments, Rations and Accommodation, etc.....	30,532,000	27,322,000
			67,583,000	62,438,000
		Expenditure Revenue		
		1965-66..... \$ 67,887,693 \$17,996,096		
		1966-67..... 82,363,707 18,684,102		
		1967-68 (estimated)..... 92,144,593 31,429,396		
		Vote 20—National Police Services, Federal Law Enforcement Duties and Provincial and Municipal Policing under contract—Con- struction or Acquisition of Buildings, Works, Land and Equipment		
		Construction or Acquisition of Buildings, Works and Land.....(8)	2,390,000	5,655,000
		Construction or Acquisition of Equipment.....(9)	4,156,000	4,205,000
			6,546,000	9,860,000
		Expenditure		
		1965-66..... \$ 4,488,343		
		1966-67..... 5,975,177		
		1967-68 (estimated)..... 10,375,000		

Positions (man-years)		Details of Services	Amount	
1968-69	1967-68		1968-69	1967-68
			\$	\$
		C—ROYAL CANADIAN MOUNTED POLICE (Continued)		
		Statutory—Pensions and Other Benefits		
		GOVERNMENT'S CONTRIBUTION TO THE ROYAL CANADIAN MOUNTED POLICE SUPERANNUATION ACCOUNT (CHAP. 34, STATUTES OF 1959).....(1)	5,729,000	5,073,480
		PENSIONS UNDER THE ROYAL CANADIAN MOUNTED POLICE PENSION CONTINUATION ACT (CHAP. 241, R.S., AS AMENDED).....(10)	6,407,000	5,761,597
		Expenditure		
		1965-66.....\$ 4,459,247		
		1966-67.....4,914,529		
		1967-68 (estimated).....5,761,597		
		TO COMPENSATE MEMBERS OF THE ROYAL CANADIAN MOUNTED POLICE FOR INJURIES RECEIVED IN THE PERFORMANCE OF DUTY (CHAP. 241, R.S.).....(10)	243,000	207,267
		Expenditure		
		1965-66.....\$ 168,484		
		1966-67.....192,936		
		1967-68 (estimated).....207,267		
		PENSIONS TO FAMILIES OF MEMBERS OF THE ROYAL CANADIAN MOUNTED POLICE WHO HAVE LOST THEIR LIVES WHILE ON DUTY.....(10)	21,000	20,700
		Expenditure		
		1965-66.....\$ 18,021		
		1966-67.....19,087		
		1967-68 (estimated).....20,700		
		ITEM NOT REQUIRED FOR 1968-69		
		Pension to Basil Burke Currie.....(10)		685
		Total, Statutory Item.....	12,400,000	11,063,729
		Expenditure		
		1965-66.....\$ 9,547,126		
		1966-67.....13,686,576		
		1967-68 (estimated).....11,063,729		

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

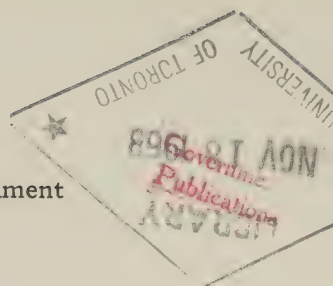
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ALISTAIR FRASER,
The Clerk of the House.

HOUSE OF COMMONS
First Session—Twenty-eighth Parliament
1968



STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS
Chairman: Mr. DONALD R. TOLMIE

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 2

TUESDAY, OCTOBER 29, 1968

Revised Main Estimates for 1968-69,
relating to
Correctional Services, the Royal Canadian Mounted Police
and the Solicitor General.

APPEARING:
The Honourable George J. McIlraith, Solicitor General of Canada.

WITNESS:
Commissioner M. F. A. Lindsay, Royal Canadian Mounted Police.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. Donald R. Tolmie

Vice-Chairman: Mr. André Ouellet
and Messrs.

Blair,	Gibson,	McCleave,
Brewin,	Gilbert,	McQuaid,
Brown,	Hogarth,	Rondeau,
Cantin,	MacEwan,	Schumacher,
¹ Chappell,	MacGuigan,	Valade,
Gervais,	Marceau,	Woolliams—(20).

(Quorum 11)

Fernand Despatie,
Clerk of the Committee.

¹ Replaced Mr. Murphy on October 28, 1968.

ORDER OF REFERENCE

MONDAY, October 28, 1968.

Ordered,—That the name of Mr. Chappell be substituted for that of Mr. Murphy on the Standing Committee on Justice and Legal Affairs.

ATTEST:

ALISTAIR FRASER,
The Clerk of the House of Commons.

(Text)

MINUTES OF PROCEEDINGS

TUESDAY, October 29, 1968.

(2)

The Standing Committee on Justice and Legal Affairs met at 11.15 a.m. this day. The Chairman, Mr. Tolmie, presided.

Members present: Messrs. Cantin, Chappell, Gervais, Gibson, Gilbert, Hogarth, MacEwan, MacGuigan, Marceau, McQuaid, Ouellet, Tolmie, Woolliams—(13).

In attendance: The Honourable George J. McIlraith, Solicitor General of Canada; Mr. J. Hollies, Acting Deputy Solicitor General; Commissioner M. F. A. Lindsay, Royal Canadian Mounted Police; Mr. J. R. Stone, Deputy Commissioner, Canadian Penitentiary Service; Mr. F. P. Miller, Executive Director, National Parole Service.

The Chairman announced the names of those who have been designated to act with him on the Subcommittee on Agenda and Procedure, namely Messrs. Cantin, Gilbert, Ouellet and Woolliams.

The Committee then proceeded to the consideration of the items listed in the Revised Main Estimates for 1968-69, relating to Correctional Services, the Royal Canadian Mounted Police and the Solicitor General.

The Chairman called the following items:

1—SOLICITOR GENERAL—Departmental Administration, etc.—\$1,266,000

5—CORRECTIONAL SERVICES—Administration, Operation and Maintenance, etc.—\$48,623,000

15—ROYAL CANADIAN MOUNTED POLICE—Administration, Operation and Maintenance, etc.—\$67,583,000

(See Evidence)

The Chairman referred to the First meeting of the Subcommittee on Agenda and Procedure, held on October 24, 1968 and to the invitation extended to the Solicitor General of Canada to appear before the Committees on October 29, 1968.

The Chairman introduced the Honourable George J. McIlraith, who made a general statement regarding the operations of the Department of the Solicitor General.

The Minister was questioned for the remainder of the meeting. He was assisted in answering questions by Commissioner Lindsay.

At 12.38 p.m., the Committee adjourned to the call of the Chair.

Fernand Despatie,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Tuesday, October 29, 1968

• 1114

The Chairman: We do not have a quorum but I think we should start. When we obtain a quorum we can confirm the previous evidence.

I would like to announce the names of members who have been designated to act with the Chairman and the Vice-Chairman on the subcommittee on agenda and procedure—Mr. Cantin, Mr. Gilbert and Mr. Woolliams. This your steering committee.

• 1115

We have had referred to this Committee the Revised Main Estimates for 1968-69, relating to Correctional Services, the Royal Canadian Mounted Police and the Solicitor General. I call Item 1.

Department of the Solicitor General

1. Departmental Administration including administrative expenses of the Committee on Corrections plus such fees, salaries and expenses as may be approved by Treasury Board for members and the panel of consultants and staff named by the Minister to advise and assist the Committee, and grants as detailed in the Estimates \$1,266,000

I also call Item 5.

Correctional Services

5. Administration, Operation and Maintenance including compensation to discharged inmates permanently disabled while in Penitentiaries and a contribution of \$25,000 to the Township of Brighton, Ontario towards the reconstruction of a road \$48,623,000

I also call Item 15.

Royal Canadian Mounted Police

15. Administration, Operation and Maintenance, including grants as detailed in

the Estimates and authority, notwithstanding the Financial Administration Act, to spend revenue received during the year \$67,583,000

We held a meeting of the steering committee on October 24 and agreed to invite the Solicitor General to make a statement before the Committee. The Solicitor General, of course, does not need any formal introduction. I should state that he was elected to Parliament in 1940 at the age of 31. He has been re-elected in ten successive general elections.

In 1963 he was appointed to a Cabinet position and has held different Cabinet positions since that time. In 1964 he was appointed Government House Leader. In July of this year he was appointed Solicitor General and, together with the Minister of Justice, he is one of the two Law Officers of the Crown.

I am very pleased to have the Solicitor General present and I now ask him to make an opening statement.

Hon. George James McIlraith (Solicitor General of Canada): Mr. Chairman and gentlemen, after an introduction like that from the Chairman I am not quite sure of what form my opening statement should take. I had one in mind but I find myself a little nonplussed by the detail of the pedigree given.

Mr. Chairman, if it meets with your wishes I propose to make a general statement regarding the operations of the Department and then later suggest you go into the detailed questioning. I have all the appropriate departmental officials here and the officials from the three bodies for which I am answerable in Parliament.

Mr. Woolliams: Have you got a copy of your statement, Mr. Minister?

Mr. McIlraith: No, I do not, unfortunately, nor have I read it yet. I should like to give

the general statement because of the newness of the Department. The very newness of it causes me some concern as I suspect it does you.

The Department was established effective October 1, 1966, just over two years ago. The duties, powers and functions of the Department extend to and include all matters over which the Parliament of Canada has jurisdiction and which are not assigned to any other department, branch or agency of the government, relating to reformatories, prisons and penitentiaries; parole and remissions and the Royal Canadian Mounted Police.

In addition to the Departmental Headquarters, incorporated within the Department are the Royal Canadian Mounted Police, the Canadian Penitentiary Service and the National Parole Board.

I should like to deal first of all with the development of policy and operations for the Department as a whole, following which I will deal separately with the operations of the Royal Canadian Mounted Police, the Canadian Penitentiary Service and the National Parole Board.

The Headquarters of the Department is still very much in the development stage. The staff strength in 1967-68 was 28 positions but in addition there were 9 more on the Minister's staff, or a total including the Minister's staff, the departmental staff of 37. That is the same total Headquarters strength, including the Minister's office at the present time. The estimates for 1968-69 show 57 positions but the difference of 20 is at the moment and are not available for filling at the present time unless we make special application and get approval for it. In addition to the administrative divisions normal to any Department, we have established a correctional planning division. This division is responsible for the development of plans for the correction and rehabilitation of offenders, for the making of recommendations on correctional policy and to assist in implementing approved changes in policy. Much of the activity of this division in its first year of operation has been related to the recommendations of the Report on Juvenile Delinquency and the establishment of a Youth and Delinquency Research Advisory Centre.

• 1120

We are also establishing a specific research unit to co-ordinate all research activities by

or on behalf of the Department, in all aspects of crime and delinquency and the rehabilitation of offenders.

The correctional planning division co-ordinates the correctional programs and services carried on by the Canadian Penitentiary Service and the National Parole Board. Specific projects have included the development of proposed standards of operations for the new community release centres of the Canadian Penitentiary Service, and the study of training courses to develop a standard of correctional services in both the federal and provincial systems and the evaluation of the current system of providing financial assistance to half-way houses and private after-care agencies. The half-way houses are operated by private agencies and with those agencies furnish post-release services to ex-inmates. During this fiscal year 10 scholarships have been provided to outstanding students who are completing post-graduate courses in the social sciences. These students, on completion of their studies, are expected to enter the Public Service either with the Penitentiary Service or the National Parole Service.

In the field of legislation a working paper was prepared consisting of a compilation, in legislative form, of the recommendations made by the Committee on Juvenile Delinquency. This paper was the principal working document at the Federal-Provincial Conference at the officials' level, held in January 1968. As a result of this study a Bill is in the course of preparation at this time but it is unlikely that it will be ready for introduction at this Session, or that if it is ready we will be able to get it on at this Session.

Now, perhaps I should say some words about the different bodies for which I am answerable. Concerning Royal Canadian Mounted Police operations, I should like first to point out that law enforcement in Canada faces one of the greatest challenges of any profession in the nation. If you will recall the remarks of Mr. U Thant, the Secretary-General of the United Nations, on this subject in relation to the world, you will see how our responsibility fits in with it. Crime in the last five years has increased at a rate three times faster than the population. If the present rate of increase continues we can expect, by 1971, that there will be about three crimes reported every minute of the day.

Obviously it is impossible to increase the numbers of trained police to parallel the increase in the crime rate. The answer would

seem to lie more in increased efficiency in the operations of every law enforcement agency, both through increased specialization and improved professional training of the police and by continued improvement in technology.

In 1967 we had Treasury Board approval for the establishment of a computer centre at RCM Police Headquarters. This will form part of what is known as an Automated Retrieval System which will begin to be set up during the present fiscal year.

The computer complex will provide police with immediate access to a large pool of pertinent data on crime and criminals and, it is confidently expected, will improve the crime solution rate and assist in preventive policing operations. The inquiry-response time of the equipment will be approximately two minutes and will enable direct interrogation to be made of the National Crime Information Centre located in Washington, D.C. for information concerning for example, guns and wanted persons, stolen vehicles and other property.

• 1125

In August 1967 the Solicitor General and the Attorneys General and Ministers of Justice of all Provinces received the Report of the Committee of Senior Canadian Police Officials which was formed as a result of the 1966 Federal-Provincial Conference on Organized Crime. Since then discussions have proceeded between the Solicitor General and the provinces. There has been no disagreement in principle and the details of the arrangement for co-operation and co-ordination between the RCMP and other Canadian police forces are being determined. Existing RCM Police crime intelligence units have been increased in size and many additional units have been established. In addition all provinces have agreed to the setting up of the Canadian Criminal Intelligence Centre in Ottawa. This is working now. There are some formal things to be completed on it but it is in fact working now and you may wish to find out about it when the Police estimates are before you.

The force has a continuing commitment in respect of securities fraud legislation enforcement concerning which a Federal-Provincial Conference was held early in 1966. Arising from discussions at that time the RCM Police were requested to study the feasibility of establishing a securities fraud investigational squad, as well as a national repository of securities regulation information. The force

has stated that these additional responsibilities can be assumed and that it could train and maintain a staff of specialized investigators across Canada to enforce those provisions of the Criminal Code relating to securities fraud in contract provinces, and is willing to establish at Ottawa a national repository of securities regulation information.

Following the reconvening of the Federal-Provincial Conference in late 1966, the Police were instructed to implement their proposals and are in the process of doing this. The national repository should be operational within the next year and the establishment of securities fraud squads will be carried out over the next few years. Steps are now being taken to establish such squads at strategic points throughout the country.

I would like now to turn for a moment to the Canadian Penitentiary Service operations.

The objective of this Service continues to be to provide those types of institutions that are appropriate for the specialized training and treatment of penitentiary inmates. The program of development that has been embarked upon, as approved by the more recent successive governments, is now well on its way to completion. This program calls for a number of different types of institutions in each region of Canada. I will now deal with the major types.

There are the reception centres for the diagnosis and evaluation of persons upon their arrival as inmates to determine the kind of training and treatment required by each of them. The construction of two new reception centres at Millhaven, Ontario, and Ste. Anne des Plaines, Quebec, will begin during the current fiscal year.

Then, special correctional units are for those few inmates who are psychopathic personalities and who have demonstrated a determination to disrupt the routine of institutions where they have been originally confined. During the fiscal year 1967/68 the special correctional unit at the City of Laval, Quebec, began operations. This institution has so far produced a very positive response by way of improved attitude from the inmates there.

There are the maximum, medium and minimum security institutions for the custody of inmates depending upon the degree of escape risk that they present, and the danger that they might occasion to the public if they escaped.

The new maximum security institution at Ste. Anne des Plaines, Quebec, is almost complete and should commence operations next month. Remodeling of several of the older institutions is under way but not at St. Vincent de Paul Penitentiary or Kingston Penitentiary. These will be closed as soon as new accommodation can be provided.

During the fiscal year 1967/68, three new medium security institutions namely at Drumheller, Alberta, Warkwarth, Ontario, and Springhill, Nova Scotia, began to receive inmates.

• 1130

Then there are the medical centres for those inmates who require special psychiatric treatment although not certifiable and for others who are chronically ill. These centres are in the planning stage for construction in the near future and their planning has proceeded with the advice of psychiatrists other than those employed in the Penitentiary Service, or in addition to, I should say.

Then there are the specialized institutions for the treatment of inmates such as the one at Matsqui for narcotic addicts. Others will be established for sexual offenders and alcoholics.

Then there are the community release centres for inmates nearing the end of their sentences as a place where they may receive shelter and counselling while seeking employment or while becoming established in new jobs. One of these is in Montreal and now in operation, and one will be opened in a few days in Winnipeg.

There are three Staff Colleges, one at the City of Laval, one at Kingston and one at New Westminster. They are now in operation for the purpose of improving the educational and training standards of the Penitentiary Service officers. All newly recruited custodial officers attend a nine-week training course prior to undertaking duties at the institutions, and new employees, other than custodial officers, attend a four-week course to acquaint them with the policies and programs of the Service. Conferences, seminars and courses for specialist staff are also conducted in the Staff College facilities to ensure continued training of the institutional staff. The conduct of courses has been much facilitated by locating Staff Colleges in close proximity to universities where studies in criminology are being conducted.

Some eight officers have been selected and sent to universities, with the aim of increasing the number of graduates with degrees in the behavioural sciences who will be available to work with the penitentiary inmates.

Over the last four years the penitentiary inmate population has declined from approximately 7,600 to approximately 6,800. This has reversed the previous trend which prior to 1964 showed an increase of inmate population of between 4 per cent and 5 per cent per annum. Research has not so far disclosed why such a reversal should have occurred. It seems probable, however, that one of the important factors in it have been the improved rehabilitative techniques in the penitentiary treatment and training programs making inmates more suitable for parole and for decreasing the likelihood of their return to an institution.

In all federal penal institutions academic, trade and vocational training continue to be emphasized while special counselling and therapy have become increasingly available. During the past six years the number of psychologist positions has increased from 20 to 30, the schoolteacher positions from 31 to 54 and the psychiatrist positions from 4 to 22.

I would like to turn now to the National Parole Board, and its operations.

The Board has jurisdiction over any adult inmate serving a sentence under federal statute in either a federal or a provincial institution. It has no jurisdiction over a child under the Juvenile Delinquents Act or any inmate serving a sentence for breach of a provincial statute.

Parole therefore is a means by which an inmate other than a juvenile, in any institution in Canada, who gives definite indication of his intention to reform, can be released so that he can serve the balance of his sentence at large in society. While on parole he is under supervision with certain necessary restrictions and conditions designed for his welfare and for the protection of society. He must abide by the terms of his parole certificate and carry out the instructions of his supervisor.

The dual purpose of parole is the reformation and rehabilitation of the inmate, and the protection of society. It is a means of assisting him to become a useful, law-abiding citizen while, at the same time, ensuring that he does not misbehave in a way of returning to crime.

Since its establishment almost ten years ago, the Parole Board has released some 22,928 inmates on parole. During this period they have had to return to prison some 2,519, one-half of whose paroles were revoked because of minor offences, or for misbehaviour on parole; and one-half of whose paroles were forfeited because they committed an indictable offence while on parole. This means that, on the average, for the first period of the Board's operation, 89 per cent or nearly 23,000 inmates released on parole in Canada have completed their periods on parole without misbehaving or committing further offences.

● 1135

There has been a continuing increase in the granting of paroles. For example, in 1964, 1,852 paroles were granted by the National Parole Board, of which 751 were to inmates in federal institutions and 1,101 to persons in provincial institutions. Based upon the figures now for the first nine months of 1968, it would appear that approximately 3,560 or almost double the 1964 rate, will be granted paroles during the present calendar year of which 1,480 will be granted by the Board to inmates of federal institutions and 2,080 to persons in provincial institutions. Despite this substantial increase in the use of parole, the failure rate during this period of four years has not changed by more than a little less than 1 per cent and is still one of the lowest in the world.

Besides the increased number of paroles granted, there has been a very substantial increase in the number of cases reviewed by the Board; from 9,982 in 1964 to 11,896 in 1967. The number of cases reviewed in the first nine months of 1968 compared with the same period in 1967, is about 1,000 more or approximately 12 per cent.

The increase in the use of parole has also resulted in a substantial increase in applications by inmates for parole and hence more cases to be reviewed.

The number of interviews conducted by the parole officers is expected to increase from approximately 17,250 in 1967 to 19,800 in 1968, or about 15 per cent.

As part of a continuing program of staff improvement, five parole officers have been granted educational leave to complete their academic training at university to the Masters degree level in social work and criminology.

It is interesting to note that the operating costs of the Penitentiary Service—and please note that I said operating costs only—would indicate that it costs somewhere between \$4,900 and \$5,500 to maintain an inmate for one year. To this must be added, in many cases, an additional amount of public funds for the support of dependents. When the man is released on parole the cost to the public for supervision and guidance is approximately one-tenth of these amounts. As well, a man on parole can be working, paying taxes and contributing to the economy of the country. It would therefore appear that parole, while achieving its primary objective as an effective and successful means of rehabilitating prisoners, has the further beneficial result of a considerable saving to the taxpayers.

During the month of June of this year the Parole Board conducted a survey of earnings of 2,284 parolees in Canada. There were approximately 2,700 men on parole during the month but we were only able to obtain the statistics on 2,284.

Of the 2,284 men, 86 per cent were employed and their gross earnings for one month were \$673,371. Their average earnings per month were \$294.82. They also were supporting 2,472 dependents. It would therefore appear correct to estimate that parolees in Canada are earning about \$8 million in wages every year. This \$8 million is money of course which is going directly into the economy of the country in a way that it would not be if they had not been released. If these persons were kept in an institution it would be necessary to provide accommodation for them and present day capital costs of institutions—it is pretty hard to estimate precisely—amount to up to \$26,000 per inmate unit.

● 1140

Because of the substantial increase in the number of paroles it has become almost impossible for the Parole Service to properly maintain its rate of granting paroles and, at the same time, provide adequate supervision after release for those on parole. The success of the parole program in rehabilitating prisoners—which incidentally results in a saving of money—makes it imperative in my view that neither the current nor the future operations of the Parole Board should be curtailed through lack of parole officers. Indeed it is my hope and expectation that it will be possible to increase the use of parole in the future. Now experience would seem to warrant this

statement. If such an increase entails the use of more people as parole officers, as it may well do, this will be a very small price indeed to pay for the attendant benefits.

Mr. Chairman, that concludes my statement. We have here the Acting Deputy Minister, the Director of Financial Services of the Department, the Deputy Commissioner of Penitentiaries, the Director of Correctional Services, the Executive Director of the National Parole Service, the Director of Administration of the National Parole Services, the Commissioner of the Royal Canadian Mounted Police, the Finance Officer of the Royal Canadian Mounted Police, and we are prepared to make these and the Chairman of the Parole Board available as you wish. I would only ask that if you get into questions involving policy they not be asked of the civil servants. You can get from them all the factual information you wish but policy matters are the responsibility of the Minister and I hope to be here to answer if I can, as best I can. I thank you.

The Chairman: Thank you, Mr. Minister, for a very comprehensive statement. I should perhaps state that my remarks regarding the lack of a quorum at the outset of the meeting could be disregarded. I noticed that we obtained the quorum as soon as I started to speak.

The Minister is now ready to answer questions. I believe Mr. Ouellet indicated that the would like to start.

Mr. Woolliams: Just before we start Mr. Chairman, I will only take a moment and it may help to speed things up and also assist some of the departmental people.

Have you given any thought—and I think the Minister might go along with this—to dividing up what we might do each day. We have everyone here today and it may be that they have other duties that are important. For example, we could have a special sitting for the RCMP. Are we going to start off in a chronological order with the Minister and ask questions, say on the various items, or cover the whole picture? I think if we ironed that out then we might be able to save all of us some time, particularly the time of the personnel who are here from the Department.

The Chairman: Yes, I think your suggestion has a lot of merit, Mr. Woolliams. The plan is to have the RCM Police next Thursday and then perhaps the following Tuesday and

Thursday we would have the correctional people, and then we could have questions relating to the Department itself. But if we can agree to have the RCM Police this coming Thursday I think it would be helpful not only to the Committee but to the Department.

Is that agreeable, Mr. Minister?

• 1145

Mr. McIlraith: Yes, that is agreeable. It seems to me that it would be better if separate services appeared at different times—the Mounted Police on a certain number of days, or one day if you wish, then the Parole Board, the Penitentiary Service, and of course the departmental officials as you want them.

Mr. Woolliams: On the questions we will be putting to the Minister will we be covering the whole picture or just certain phases today?

The Chairman: Yes, the Minister has indicated that he will be available when the other officials representing, for example, the correctional service and the Canadian Penitentiary Service will be present. Now, today I think it would be helpful if members wanted to ask questions pertaining to the general administration and jurisdiction of his Department.

I think there is a certain amount of confusion as to the respective jurisdiction of the Department of the Solicitor General and the Department of Justice, so perhaps this meeting could be used for broad questions and then we can get into the specific areas in the following weeks if members agree.

Mr. Ouellet?

[Interpretation]

Mr. Ouellet: Thank you Mr. Chairman. My first question has to do with the report on Juvenile Delinquency. I should like to ask the minister whether any steps have been taken towards drafting a bill with regard to this and I should also like to know what its contents are?

[English]

Mr. McIlraith: It is not good enough; I did not have the translation on.

Mr. Ouellet: Do you understand my question?

[Text]

Mr. McIlraith: Not fully, no; I had no translation on.

The Chairman: Is there any translation here today?

Mr. McIlraith: It started to come through and then it did not come through.

Mr. Ouellet: You could reply to me in English. My question is as follows: Can you hear?

[English]

Mr. McIlraith: Yes, it is coming through now.

[Interpretation]

Mr. Ouellet: ... I would like the minister to give me some idea concerning the proposed bill that is being prepared following the publication of the report on Juvenile Delinquency. I would like to have some idea concerning the substance of the bill.

[English]

Mr. McIlraith: It is a bill in course of preparation. It is rather difficult to do it. Before the government agrees finally on the detail of each part of it, it is perhaps unwise to give you the detail of it, but in a general way it is an attempt to replace the very old act called the Juvenile Delinquents Act by an act very much broader, probably to be called the young offenders act.

The detail of it is being well worked out, has been and continues to be with the provinces because we are into one of those fields where the provinces are vitally and directly concerned. That is, perhaps, not a very precise answer, but I think it is the best one I can give you at the moment.

[Interpretation]

Mr. Ouellet: If I understand correctly, this bill takes into account the recommendations of the report on Juvenile Delinquency?

[English]

Mr. McIlraith: Yes.

[Interpretation]

Mr. Ouellet: All the recommendations or just part thereof?

[English]

Mr. McIlraith: It would be not all the recommendations. I am not prepared to bind myself to all the recommendations, by any means.

[Interpretation]

Mr. Ouellet: Could you indicate, at this point, which recommendations seem most useful towards inclusion in such a bill?

[English]

Mr. McIlraith: No; I prefer not to at this stage because to do so before I have this matter submitted to my colleagues would perhaps be unwise and not a very useful exercise.

• 1150

[Interpretation]

Mr. Ouellet: My second question has to do with the membership of the Parole Commission. Can we expect an increase in membership within the near future?

[English]

Mr. McIlraith: Yes, in our legislation I think it indicated in Bill C-195 last year that there would be an increase in the bill that will be coming back before the House very shortly. There will be an increase in the membership on that board.

[Interpretation]

Mr. Ouellet: And this bill will be presented at this session?

[English]

Mr. McIlraith: Yes, yes; I hope very shortly.

[Interpretation]

Mr. Ouellet: My final question concerns the demolition of the Saint-Vincent-de-Paul penitentiary. Could you let us know, now how many inmates there are at Saint-Vincent-de-Paul?

[English]

Mr. McIlraith: Yes. I do not have it in the material before me at the minute, but I will get this for you when the Canadian Penitentiary Service witnesses are before the Committee.

Mr. Ouellet: What I would like to know is, in view of the construction of a maximum

security penitentiary at Sainte-Anne-des-Plaines, there is a great number of inmates at Saint-Vincent-de-Paul who will be transferred to Sainte-Anne-des-Plaines. But, amongst these inmates, there is a group of inmates who could perfectly well be placed in the medium security penitentiary. I see that there is no plan for the building of medium security penitentiary in the province of Quebec. Is it intended to send these inmates to another province to another medium security penitentiary, or can they be absorbed by another institution in Quebec?

[English]

Mr. McIlraith: There is no intention of sending them out of the province but I would like, when we deal with the whole construction program of the Canadian Penitentiary Service, to lay before you in a comprehensive way the whole construction program, because to take one item of it and attempt to answer it in a general way is perhaps not as satisfactory as you would wish. When we have the Canadian Penitentiary Service before the Committee we will give you all the details on this.

[Interpretation]

Mr. Ouellet: Thank you, Mr. Chairman. I shall come back to this then later on.

[English]

The Chairman: Thank you, Mr. Ouellet. Mr. Gibson?

Mr. Gibson: My question is not necessary now. It was about the RCMP and I am very interested in the estimates on the RCMP, sir. I am concerned about the pay that the RCMP receive. The actual money they get in pay and...

Mr. McIlraith: The rate of pay?

Mr. Gibson: The rate of pay, sir, yes, and living conditions. Generally I should like to know when the appropriate time would be to discuss that in this Committee.

An hon. Member: We are going to deal with that on Thursday.

Mr. Gibson: Can we question officials at that time, sir?

Mr. McIlraith: Yes.

Mr. Gibson: It is just for my own information. I am sorry; I am not familiar with how it is done.

Mr. McIlraith: Yes, you can question the officials fully then and if you want additional information that affects policy you can come back at me.

Mr. Gibson: Thank you, very much.

The Chairman: Mr. Gilbert, please.

Mr. Gilbert: Mr. Chairman, the first question I want to put to the Minister is to ask him how his health is because I think he should spike the rumour that he may be moving to the other place. When you take into account the number of ministers we have had in the Solicitor General's Department and the Minister of Justice, it does not give regularity and stability to the department. So I hope that the Minister's health is good and that he has no intention of moving to the other place.

• 1155

Mr. McIlraith: Perhaps I should answer this right off. I have two answers to it. First of all, the Prime Minister chooses the ministers and the ministers do not determine their length of office; the Prime Minister determines that—the Prime Minister and other forces—but I should say that this kind of rumour first started with me in 1941 when the newspaper headlines indicated I was being appointed Clerk Assistant of the House of Commons.

Why I would be interested in that job no one, including me, ever knew, but those were the headlines. I think I still have them. That kind of rumour has persisted regularly with me now for quite a few years, more years than all other members but one have been in the House of Commons, and it has been absolutely regular and persistent.

The third point I should like to make is that so far as I know my health is excellent; and certainly the hours and activities seem to indicate that it is pretty good.

Mr. Gilbert: Thank you, Mr. Minister, I am happy to hear that.

I now direct my mind to the jurisdictional problem and ask you whether you are responsible for the matter of bail and for the expungement of criminal records? I recall, in the last session, directing remarks to the Solicitor General when the Estimates came up. He made the statement that he had raised, before the Cabinet, recommendations on bail and on expungement of criminal records and was awaiting the action of the Cabinet.

Are you responsible for this and are you going to initiate action in this session?

Mr. McIlraith: You made reference to two subjects, bail and the expunging of records. If I may separate them for the purpose of answering, the expunging of records would appear to be my responsibility.

Now, it seems to me that that question is related to another, the question of pardons—the different types of pardons. If you want some information on that subject I would be glad to get it and give it to you.

Perhaps it would be best to bring it forward when we have the National Parole Board officers here; but it should be brought forward if you are going to discuss it.

Mr. Gilbert: I wish to refresh your memory...

Mr. McIlraith: On the expunging of records I do not expect to have any legislation before Parliament this year, nor indeed am I prepared at the moment to commit myself to legislation to expunge criminal records.

There are a lot of complications in that question. It calls for a lot of attention and it is getting a lot of attention. The simple proposition that one can expunge records and that it carries no very serious difficulties and implications is quite wrong.

The question of pardons is much less complicated and seems to deal with some cases where there should be some remedy or where some action should be taken.

Now, bail is not in my area of responsibility, but I should add that the Canadian Committee or Corrections will be making a report at the end of this fiscal year. I have no way of knowing what the report will deal with, but it is a reasonable assumption, by anyone who has watched their work and been familiar with what they have put on record publicly so far, that it may well deal with this subject; but I would not anticipate legislation dealing with bail at this session.

I would not want to take any position on that until after that report is in. I am rather hopeful that there will be a lot of good material in that report of that Committee when it is completed. It has done a great deal of work, and I am optimistic enough to think that their report will be very useful to us.

• 1200

Mr. Gilbert: Mr. Minister, I would like to refresh your memory on the work that this Committee did in the last session.

We did a tremendous amount of work relative to the expungement of criminal records and it was done on the initiative of a bill by our present Chairman.

We did present a report to the House, and one would hope that the Government would act on the work and the report of a committee.

This Committee also did a tremendous amount of work on the subject of bail.

I was under the impression that the moment was right and that the Government was about to act on these matters. Now you tell us that you do not expect to take action with regard to the expungement and that you are awaiting the report of the Canadian Committee on Corrections with regard to bail.

Mr. McIlraith: Yes.

Mr. Gilbert: To me, Mr. Minister, this is very disappointing, because so many of the Members worked so hard. We thought we had arrived at results, and that the Government—more especially on the undertaking or the assurance, of the former Solicitor General—would take action.

I wish to refresh your memory on that, and I hope that you will take action on these important matters.

Mr. McIlraith: I like action to be effective action that improves the present situation. With great deference to the work of the Committee, which I think was excellent, I do not think it is always the final answer to a Minister who has the responsibility. It has to be studied in conjunction with any other information, whether from royal commissions or otherwise, on the same subject.

On the expunging of criminal records, I am afraid some assumptions were made in that work that are not necessarily valid. I am quite agreeable to discussing the subject rather fully at the appropriate time, if you wish, but I do not think it is just a simple matter of a government legislating on a committee's report and assuming that it is the end of their responsibility if they have legislated on the committee report. We have a responsibility to evaluate the report very carefully, along with all other qualified or valuable information on the subject, and then to take a decision.

The Chairman: Mr. Minister, I would like to interject. I am very personally interested in this particular problem of erasing criminal records.

Mr. Gilbert mentioned the fact that the matter was brought before the Justice Committee. The Justice Committee approved of this principle, and a memorandum was left by the former solicitor general to the Cabinet. The Cabinet approved of this principle, and the expectation was that legislation would be forthcoming.

I thought I should go on the record and state that this was the sequence of events, Mr. Minister.

Mr. McIlraith: May I ask you a question from reading your report? Was the matter that you really were concerned with that of getting rid of criminal records, or was it a question of adequately protecting a man so that his record should not be used against him, or be shown against him, or come up against him, in any future circumstance?

These are two different things, you know. There is having regard for the individual and correcting a situation vis-à-vis the individual who has the record, and there is the other matter of destroying the record itself.

I invite your consideration of whether an occurrence that has taken place can be extinguished merely by destroying the records? Or do you really desire to see that the man concerned is no longer charged with, or have held against him, that occurrence for which he has long since served his penalty and discharged his obligation?

The subject is rather deeper than some of the material indicated.

In other words, it is the mechanics to achieve the desired ends that can be covered by legislation, and it is with the best mechanics to achieve those ends that we as legislators, must concern ourselves.

• 1205

My current experience—and I admit frankly it is very short—and the studies that are going on in the Department indicate to me that it may be that the pardon method is the preferable way. If you want to pursue this subject, it is one that should be pursued. I have no quarrel whatever with the ends being sought. In fact I am in accord with

them, but I am not prepared at this time to agree that the expunging of criminal records is the way to achieve that end.

Mr. Gilbert: Well Mr. McIlraith you are quite right that you have just moved into the department and probably have not had time to study the proceedings that took place before the Committee, and the report of the Committee, and the memorandum of the Minister, but I would appreciate it, when you have time, if you would read it because I think members are very disappointed with regard to the inaction of the government.

Mr. McIlraith: There is no inaction, there is a great deal of action on this. I may tell you I read and discussed the memorandum of the Minister with him in great detail at the time it was prepared, before it was submitted to Cabinet, when it was submitted to Cabinet, and as a Cabinet Minister.

Mr. Gilbert: I wonder if I may ask you...

Mr. McIlraith: I can only say that I had some background in this kind of work many years ago, a great deal of it. It is quite improper to say there is nothing being done on the subject, but it is a matter of what legislation, if any, is required to achieve the end.

Mr. Woolliams: May I ask a supplementary question that might clear the air? The Minister sort of intimated something was going to be done, but we do not know what it is going to be. He does not say it is going to follow, as my good friend has suggested, the report of the Committee. Would he then in the very near future make a clear-cut statement to this Committee as to what his intentions are, what he recommended to his department, and the government's stand is in this regard.

Mr. McIlraith: I would be very glad to indicate the government's stand in this regard. The subject is causing me a great deal of concern and is getting a good deal of attention in the department. The use of pardon is considerably increased and seems to better cover a great many of the cases than the expunging of the records. But that is an opinion that I reserve the right to change in the light of more study on it.

Mr. Woolliams: Well, Mr. Chairman, I think this is not very clear. When the honourable Minister speaks of "pardon", when he says

it will not be expunged from the record, that record will still exist there, what does "pardon" really mean?

Mr. McIlraith: In the light of the discussion this morning, I suggest the time to bring this subject forward would be when we are dealing with the old services. Then I may take a little time to give a more precise and better statement on exactly what "pardon" means, how it works out, how it is used, and the implications of the system.

Mr. Gilbert: Mr. McIlraith are you in charge of the sentencing provisions under the Criminal Code? The reason I ask is that a case took place just recently whereby Magistrate Langdon rather than finding the young fellow guilty of the offence, directed that he spend a week in custody with the intention that he will probably release him at the end of the week without imposing a conviction on him. That means that there has been a breakthrough with regard to criminal convictions on young offenders, and possibly other persons. From the reading I have had this appears to be a method they are applying in Great Britain whereby the magistrate does not fine the person guilty of the offence, rather he adjourns the case *sine die* to such a time as he considers there has been a rehabilitation or a reformation and then he disposes of the case. Now this is very important, Mr. McIlraith, this is a breakthrough with regard to sentencing and convictions, and I would like you as the Minister to be aware of this. I would hope that the government would take action because it would require amendments to the sentencing provisions of the Code.

• 1210

Mr. McIlraith: To try to answer all the implications of your question I should first say that the technical answer to the first part of your question is that this is the responsibility of the Minister of Justice. However, in addition to that I should say that the former Solicitor General, Mr. Pennell, interested himself in this aspect of the Criminal Code amendments a great deal, a very great deal. Again, I do not want to anticipate legislation in detail, but I think you will find in Bill C-195 something on this subject. I should, however, also add that I quarrel with your statement about breakthrough, this was a method we were using regularly 30 years ago in what we then called the police courts in

Ottawa. There has been nothing new about it, it is an old method. I am not familiar with the case you speak of.

Mr. Hogarth: It is not encoded by the English law, they call it a conditional discharge, or an absolute discharge.

Mr. McIlraith: Yes, but the method is not new. I do not want to get off into a philosophical discussion of the pre-formal convictions; holding in custody with a purpose in mind of finding the man guilty, postponing the formal decision and then releasing him on suspended sentence. It is now a new thing at all.

Mr. Gilbert: You are probably right in theory but in practice it has not been used too often.

Mr. Gibson: Mr. Chairman, as a counsel of 18 years, which is not a very long time, I can assure you that in the Hamilton area, and prior to cases before Magistrate Langdon this has been going on for many years, successfully.

Mr. McIlraith: It has been going on since I began as a law student, and when I was doing Crown Attorney's work it was used a great deal on both sides, doing work for the defendants and for the Crown. It has been used a very great deal for a very great number of years.

The Chairman: Any further questions, Mr. Gilbert?

Mr. Gilbert: That is all, thank you.

The Chairman: Mr. MacEwan?

Mr. MacEwan: I have just one question here, Mr. Chairman, about something which happened not long ago in the House of Commons. There were two different occasions, both a matter of leaks, when it was suggested that the Solicitor General was designated as the man to look into these leaks. Now one of these cases, I believe, was in regard to a member of the Public Service, I think in the Department of National Defence, who apparently was found leaking some information to foreign countries. He was not prosecuted, but he was dismissed from the Public Service. The other, just lately, was the case of the B and B Commission, where the Prime Minister said he would have the Solicitor General look into the matter of leaks. I wonder if the Solicitor General might just tell the Committee what action he has taken in that regard because it is most important to Canadians.

Mr. McIlraith: I do not understand your reference to the first case in this connection.

Mr. MacEwan: Well, what about the second, the B and B then? The matter of leaks, the Minister...

Mr. McIlraith: It is a matter, because the Minister is the one answerable in Parliament for the Royal Canadian Mounted Police, of having the police investigate.

Mr. MacEwan: All right what action has been taken in this regard then? I will ask the Minister that.

Mr. McIlraith: As a matter of fact before the question arose in the House, when the matter became public, there was an immediate request to them. That case is somewhat complicated by the fact that there is a Royal Commission operating, and if the material used is accurate, which we do not know, it would be material of the Commission, and not of the government because the Committee report has not been presented to the government as yet. In any event the matter is being investigated and we can get more information on that in a detailed way. I do not know if you would like me to get an interim report before we have a final report on it, or whether you prefer to wait until we get the final report.

• 1215

Mr. MacEwan: I think an interim report would be in order if the Minister could report to the Committee on that.

Mr. McIlraith: All right.

Mr. MacEwan: That is all for now.

The Chairman: Mr. Woolliams?

Mr. Woolliams: Yes, I have two questions, but just to follow up Mr. MacEwan's remarks, it has been reported in the newspaper that the B and B Commission report has been lying around for a long time. It was delayed because of the election, it is still being delayed because of certain things and it was very easy to pick up a copy. So maybe when the Minister makes his interim report he might consider that allegation which has already been made public.

Mr. McIlraith: I do not know to what extent a minister or a government can answer every wild report in a newspaper.

Mr. Woolliams: Do you call that a wild report?

Mr. McIlraith: Yes, I would think it was.

Mr. Woolliams: There is nothing to substantiate that the facts in the newspaper are erroneous.

Mr. McIlraith: I would dearly love to have the Commission make their report and make it available, and I think the government would. They have been trying and trying for a long time in that particular Commission to make their report, to get their work terminated.

Mr. Woolliams: I want to come to the next subject in which I am interested. I ask this question, Mr. Chairman, through you of the Minister. I have also asked this question in the House. Before I put the question to you I wish to say that I am not making anything of whether it falls under Mr. Turner's jurisdiction or your jurisdiction. It is a question of probes. In your well-put-together report you mention that crime is on the increase.

Mr. McIlraith: Yes.

Mr. Woolliams: And by way of preamble I might say that I am interested, when the proper time comes, in finding out how many murders were committed last year, how many were unsolved, how many were solved and how many people were convicted. I am thinking particularly of the increase in crime.

The point I want to make and the matter I want to deal with now is that the Prime Minister of Quebec has asked for a probe into crime because of the number of unsolved murders in the City of Montreal and elsewhere in that vicinity. I asked this question in the House and to date I have had no satisfactory answer from either Minister. It may be that you have not had the opportunity to answer. Is it the government's intention to have a probe into the increase in crime in this nation?

Mr. McIlraith: The federal government?

Mr. Woolliams: Yes.

Mr. McIlraith: No.

Mr. Woolliams: What was your answer, then, to the Prime Minister of Quebec in this regard?

Mr. McIlraith: I do not think there was any request in that form from the Prime Minister of Quebec.

Mr. Woolliams: The Prime Minister said, and it has never been denied, that he asked. Even the Minister of Justice, with the greatest respect, did not deny that. Mr. Bertrand said that if they were not going to hold a royal commission, that he hoped they would have a probe into crime because it was on the increase. As the Minister knows, there is the organization of all the provinces. Maybe I had better wait until I have the Minister's ear. I do not want to lose his ear in this regard.

An hon. Member: You lost part of your question there already.

Mr. McIlraith: Yes.

Mr. Woolliams: Somebody just asked for the microphone. I do not think I am talking too loud.

There is an organization or a commission that was set up for the various provinces. Apparently Quebec did not agree to go into this but they have a liaison with that commission with the other provinces. Could the Minister, first of all, tell us why the request of the Prime Minister of Quebec was refused and whether he feels at this time, with the large increase in crime which he has mentioned, that it is necessary in his opinion that our policy should be to have some investigation into the increase in crime?

Mr. McIlraith: There are three questions there. First of all, there is the question of what the Prime Minister asked for. I believe that letter was tabled in the House of Commons, was it not?

Mr. Woolliams: No, it has never been tabled.

• 1220

Mr. McIlraith: Did Mr. Valade not ask for it? I would like to check up and have the actual letter. In any event, he was not asking for a probe into crime or a royal commission. As I recall it, it was a conference—and I would like to have the right to correct this because I would want to refresh my memory on it—of provincial Attorneys-General and the federal authority to discuss the matter, which is quite a different thing from a probe, as I understand your use of the term.

Mr. Woolliams: Mr. Minister, I think you can—

Mr. McIlraith: That is the thing. If that is what you are asking about, that has not been

dealt with yet. That is something which is separate altogether from a probe into organized crime, which I interpret to mean a royal commission or some other investigative body to go into the subject. I just answered no to that.

Mr. Woolliams: With the greatest respect, Mr. Minister, I think there seems to be a little confusion here. Perhaps I did not make myself clear. There was a letter and that was discussed in the House.

Mr. McIlraith: Yes, and I have read the letter.

Mr. Woolliams: Yes. Then subsequent to the letter, after the letter was written, the Prime Minister made a request for a probe. That is the way I understand the situation and the facts. That has not been denied. I think that when you make—

Mr. McIlraith: No, that is not right. I will get the correspondence and set this right for you.

Mr. Woolliams: I think we should have a clear-cut statement as to what Quebec asked—

Mr. McIlraith: Yes, we will get it.

Mr. Woolliams: —and what part they are playing with the other provinces in reference to crime. Maybe I will now come to this question.

Mr. McIlraith: Could I deal with that second question separately before you leave it, because there was a slight error there. It is understandable.

The Canadian Criminal Intelligence Service have indicated their approval of it and are working very closely on it. I think if you will look at the questions and answers you will find that there was nothing contrary to that.

Mr. Woolliams: Nobody suggested that.

Mr. McIlraith: No. When the estimates for the RCMP are before the Committee I hope you will get an explanation of exactly how that Canadian Criminal Intelligence Service is working, because it appears to be a very good and very effective development. I would hope that could be brought up in that way. The Quebec authorities are co-operating in that work.

Mr. Woolliams: May I ask this question to clarify it. Could you give us a clear-cut rea-

son why Quebec did not come into the Canadian Criminal Intelligence Service? Did they give a reason for this?

Mr. McIlraith: No. Right from the first they approved in principle the Canadian Criminal Intelligence Service. I suppose when you have ten provinces and you set up machinery, sometimes one comes before another. You do not set it up instantaneously. However, they have been co-operating very well, but I want the Commissioner, perhaps, to be a little more particular when we come to his estimates.

If I may, before we leave your second last question when you spoke about increased crime, I would like to point out that part of the increase in figures or statistics on this subject is due to increased efficiency in reporting the crimes which take place. How much that is a factor in the increase I cannot tell you offhand, but it is clear that it is a factor in that increase. How much of it is real and how much of it is increased efficiency in reporting them, I am not able to give you, but it is one of the factors that you have to take into account when you are dealing with this problem.

Mr. Woolliams: I gather from the Minister's answer that Quebec is not a part of the Canadian Criminal Intelligence Service but they are working in co-operation with it. I have not been able to get an answer on why they are not a part of it or what objection they have to it. I hope when they—

Mr. McIlraith: We will give you the answer now if you want to—

Mr. Woolliams: All right, I would like to hear the answer to clarify it.

Mr. McIlraith: I take it that at the moment you want us to deal with this in general terms, and he will be more particular when he—

• 1225

Mr. Woolliams: I just want a simple answer to why Quebec is not a member of the Canadian Criminal Intelligence Service and why they prefer to work in liaison with them rather than be a member. There must be a reason for this. They must have set it out in writing, from what has been said in the House of Commons, and I think we are entitled to know that.

The next question I want to ask is if the Canadian Criminal Intelligence Service is the only step that has been taken to control the increase in crime, what steps are taken? That is what I am leading up to.

Commissioner M. F. A. Lindsay (Royal Canadian Mounted Police): Mr. Chairman, I will have to be rather general in reply at the present time because I do not have my dates at the moment.

During the Federal-Provincial Conference on Organized Crime on January 6 and 7, 1966, this matter came up and was discussed very extensively. At that time the then minister of justice of Quebec appeared to be very much in favour of the Canadian Crime Intelligence Service. The federal police offered to set this up because, we were already operating in this field and had been for several years with some specially trained personnel. At that time he had broached this matter of a probe or commission or inquiry into the matter of crime generally.

Now as you are aware, the government changed but the police forces involved went straight ahead and were co-operating on the working level and elsewhere. The Director General of the Quebec Provincial Police was one of the four on the special committee set up to examine this whole problem. We have had a very close co-operation with them. I think there are terms involved in the matter of them joining a crime intelligence service. As I say, they have been contributing to it, and there is close co-operation. Quebec has had a member of their police service added to the CILQ, the crime intelligence of Ontario, as we have ourselves. So I would have to examine this more carefully to determine just what is involved in what appears to be a matter of definition or terms.

Mr. Woolliams: Would you mind telling us how the Canada Crime Intelligence Service functions, why it was set up, what its real purpose is, and how it is functioning?

Commissioner Lindsay: Yes. We had set up crime intelligence units across the country in the major centres, including Quebec and Ontario, some time before this and this was really because of the outcome of the probe in the Province of Ontario which disclosed that there was infiltration in this country. We acted very promptly and set up these units. After the federal-provincial conference in January 1966 and working directly under the

instructions of our minister at that time we greatly enlarged these units and also enlarged our central unit in our headquarters which at that time was tabulating, listing and pulling together what we call crime intelligence. Now this is involved crime, not the petty lotteries; this is interprovincial and international crime.

This information from across Canada is fed into us very rapidly and disseminated to our own NCIU units—National Crime Intelligence Units—and they in turn keep the crime intelligence units which are in liaison continually with the provinces, including Quebec, fully informed on what is going on in this field.

• 1230

Now, in addition, we have also had very close co-operation across the border, which is very important to us here in this organized field of crime. With the approval of the Minister, we have actually had members of our committee sit in as observers on very active high-level groups that have been probing organized crime with some very considerable success internationally.

Mr. Woolliams: Mr. Lindsay, I would not want you to answer this if it would interfere in any way with your administrative duties in the investigation of crime, but because of the increase in crime—and the Minister has mentioned that—and particularly the unsolved types of murders that took place in Montreal and district, which I am sure is what the Prime Minister of Quebec was talking about when he mentioned the increase in crime, has this Canadian intelligence group, in liaison—and you say there has been good co-operation—with the Province of Quebec come to grips with the question of these unsolved murders? Is there any chance of a breakthrough so that those particular crimes can be solved.

Commissioner Lindsay: You are talking of course now about two different types of murders. You have of course the strictly local murders arising out of, let us say, bank robberies and this sort of thing, the investigation of which is solely under the control of the minister of justice of the province in this case.

Now in connection with gangland murders, if you wish—

Mr. Woolliams: That is right.

Commissioner Lindsay: —there is very close co-operation. May I add that although there was no probe or royal commission set

up in connection with organized crime, the Province of Quebec went ahead and set up the Prévost Commission which has been working very actively in excess of a year now, and they have been investigating both crime, methods of investigation and correctional services in that province. We have appeared before that Prévost Commission.

Mr. Woolliams: Thank you very much, but I come back to my question. Could you tell us at the Committee level whether there is any chance of a breakthrough—I was really referring to these murders en masse, the gang murders in reference to Quebec—by working together in liaison with the Province of Quebec and with the Canadian intelligence? Is there any chance of a solution?

Commissioner Lindsay: Well, naturally we are unable to predict what the result of active co-operation will produce. We are working actively all the time in this regard and any information any police force has is channelled to the proper investigators who can bring that information to bear readily.

Now as to a particular breakthrough in this type of thing, in murders which are sporadic, it would be very difficult to say. In connection with crime generally, the Minister has mentioned the increasing incidence of crime and the matter of reporting. In a recent tour of our Maritime divisions I discovered that what he said was exactly correct. They are reporting now more offences than were reported previously. We are trying to examine the nature of these offences—that is, offences merely reported. Let us take, for example, thefts of parts from cars reported solely for the purpose of collecting small amounts of insurance. Now at one time children could take off hubcaps and might roll a tire away. These I find are being reported as thefts and we are trying to analyse these very carefully to see just what effect this has on the incidence of crime. They could be crimes—they are reported and now listed as such—but our final answer has not come up yet.

Mr. Woolliams: Following up on what you said, have you the feeling from working with the Canadian intelligence and from your own knowledge that some of these murders, which you refer to as gang murders, are occurring in Canada—there was a statement made by one of the officials of the RCMP to that effect—and that there is an international flavour to them, to put it mildly?

Commissioner Lindsay: What I have to say would be largely conjecture. I am trying to think of any incidents that have been reported to us, because of course murders in the Province of Quebec are the responsibility, primarily, of the Minister of Justice of Quebec. There have been some that definitely have arisen—the press has said—out of very involved bankruptcy cases. This has occurred and assistance has been given the province whenever they have asked it and, as I say, co-operation is very close on the working level in connection with these. As to a feeling, these are sporadic and so far as the general feeling in this regard is concerned I do not think there is any definite answer to that.

• 1235

Mr. Woolliams: I am sorry. When you say there has been some, are you referring to some cases in the Province of Quebec or in Western Canada?

Commissioner Lindsay: The ones I had in mind, of course, are well known. It was three or four years ago in the Province of Quebec. They have all been reported in the press.

Mr. Woolliams: Well, Mr. Chairman, I see it is lunch hour. I would like to follow through, if I may, at a later meeting at proper time if you are convening the Committee on this point—and this is going to be brief—in reference to the Canadian intelligence. Was it set up because there seemed to be an inter-

national ring operating from the United States into Canada as has been suggested? We have the late Commissioner's statement; he said there was gangs operating in Canada.

I should like to follow this through at a later time if we can do so without doing harm to the administration of justice, because we do not want to ask questions that might assist the criminals rather than the administrators.

The Chairman: Mr. Woolliams, the RCMP will be here next Thursday and this line of questioning could be pursued. What is the wish of the Committee? It is about twenty minutes to one. There are other members who want to ask questions. Should we continue?

Mr. Hogarth: Mr. Chairman, I wonder whether we could possibly arrange for Mr. Woolliams' basic premise to be established one way or the other as to whether the Prime Minister of Quebec desired to have a royal commission or an interprovincial conference on crime and was refused it. I think that letter should be straightened out.

Mr. McIlraith: I will clear that up if I can.

Mr. Hogarth: I think his basic premise is wrong. As I remember, it turned out to be somebody other than the Prime Minister that had asked for some form of conference.

The Chairman: Thank you very much, Mr. Minister, for your assistance.

HOUSE OF COMMONS

First Session—Twenty-eighth Parliament

1968

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. DONALD R. TOLMIE

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

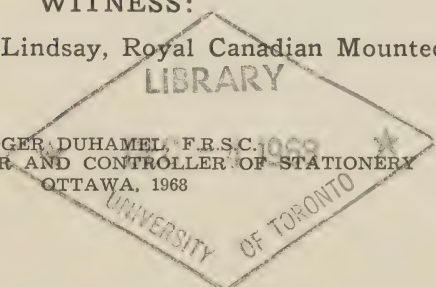
THURSDAY, OCTOBER 31, 1968

Revised Main Estimates for 1968-69,
relating to
Correctional Services, the Royal Canadian Mounted Police
and the Solicitor General.

WITNESS:

Commissioner M. F. A. Lindsay, Royal Canadian Mounted Police.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968



STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. Donald R. Tolmie

Vice-Chairman: Mr. André Ouellet
and Messrs.

Blair,
Brewin,
Brown,
Cantin,
Chappell,
Gervais,

Gibson,
Gilbert,
Hogarth,
MacEwan,
MacGuigan,
Marceau,

McCleave,
McQuaid,
Rondeau,
Schumacher,
Valade,
Woolliams—(20).

(Quorum 11)

Fernand Despatie,
Clerk of the Committee.

REPORT TO THE HOUSE

THURSDAY, October 31, 1968.

The Standing Committee on Justice and Legal Affairs has the honour to present its

FIRST REPORT

Your Committee recommends that it be authorized to sit while the House is sitting.

Respectfully submitted,

DONALD TOLMIE,
Chairman.

MINUTES OF PROCEEDINGS

THURSDAY, October 31, 1968.

(3)

(Text)

The Standing Committee on Justice and Legal Affairs met at 11.10 a.m. this day. The Chairman, Mr. Tolmie, presided.

Members present: Messrs. Brown, Cantin, Chappell, Gervais, Gibson, Gilbert, Hogarth, MacEwan, MacGuigan, Marceau, McCleave, McQuaid, Ouellet, Tolmie, Woolliams (15).

In attendance: The Honourable George J. McIlraith, Solicitor General of Canada. *From the Royal Canadian Mounted Police:* Commissioner M. F. A. Lindsay; Messrs. W. H. Kelly, Deputy Commissioner (*Operations*); W. J. Fitzsimmons, Deputy Commissioner (*Administration*); G. W. Mortimer, Assistant Commissioner (*Services and Supply*); B. Lynch, Financial Officer.

On motion of Mr. Gibson, seconded by Mr. McCleave, it was

Resolved,—That the Committee seek leave to sit while the House is sitting. (*See First Report to the House*)

The Committee resumed consideration of Item 15 listed in the Revised Main Estimates for 1968-69, relating to the Royal Canadian Mounted Police.

The Chairman introduced Commissioner Lindsay, who was questioned for the remainder of the meeting.

At 12.38 p.m., the Committee adjourned to the call of the Chair.

Fernand Despatie,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Thursday, October 31, 1968.

● 1110

The Chairman: Gentlemen, we now have a quorum. The Co-ordinating Committee has decided that in certain cases committees should sit while the House sits. I would like to have a motion that we seek leave to sit while the House is sitting.

Mr. Gibson: I so move.

Mr. McCleave: I will second the motion. Mr. Chairman, I regret having to leave but I must go to the Broadcasting Committee. Perhaps the motion which has been put will help solve this problem.

Mr. Woolliams: I wonder if I could just speak to the motion. I go along with it because I want to see progress in our work. However, there does come a time when our services are required in the House. I remember situations developing when Mr. Pickersgill and others were in the Opposition, and I am not being critical of this. Some of us in the Opposition have particular jobs to perform and because of this, sometimes we do have to be in the House. I was wondering, Mr. Chairman, if under such circumstances, and it would only be a rare occasion, you could adjourn the sitting of the Committee that was meeting while the House is sitting.

For example, I am Chairman of the Justice caucus and if something comes up, say, on the Supreme Court Act of Canada I have to be in the House, and I think the other members of the Committee who are in our group should be in the House too. That is the only objection I raise and I would hope the Committee would see its way clear to comply with my request if such a situation arose. That is the only problem we would have in respect of the motion; otherwise I agree with it 100 per cent.

The Chairman: Yes, I do not see any reason why we could not make concessions of that nature.

It has been moved by Mr. Gibson and seconded by Mr. McCleave that the Commit-

tee seek leave to sit while the House is sitting.

Motion agreed to.

The Chairman: Now we will resume consideration of the items listed in the Revised Main Estimates for 1968-69, and I would like to call Item 15 again—the Royal Canadian Mounted Police.

Commissioner Lindsay was giving evidence at the last meeting and I would like to again have the Commissioner give evidence. Once he has completed his evidence he will answer your questions.

Mr. Hogarth: Mr. Chairman, on a point of order. Did we not pause to determine what the exchange of correspondence was between the Province of Quebec and the Solicitor General or the Minister of Justice pertaining to a request for a royal commission by the hon. member to my left.

The Chairman: Yes, I believe the Solicitor General indicated that he had this correspondence available. I do not know whether or not he has it now.

Hon. G. J. McIlraith (Solicitor General of Canada): Yes, I said I would get that. We have not it all available because I am trying to find out what request, if any, was made. There is some doubt about whether the request ever was made.

Mr. Woolliams: Mr. Chairman, the RCMP are here and if it is agreeable with the Committee we could go on with them and then deal later with this other matter when it comes up.

Mr. Hogarth: I certainly agree with that. I do not think we should proceed on a proposition that is based on a wrong premise to begin with—if it is wrong, and I am not suggesting it is.

The Chairman: Commissioner Lindsay, please. Perhaps we can start things off with questions. Mr. Woolliams, will you proceed.

Mr. Woolliams: I have a line of questions but I want to assure the Commissioner this

morning that these questions are for information purposes only. I, like I think every member of the Committee here, irrespective of politics, feel that the RCMP have always done a great job and have enjoyed the high respect they deserve. Because of the high calibre of the jobs they are doing we have always felt they have been underpaid when you compare the services they are rendering to people in industry and other public services.

• 1115

If it is all right with the Commissioner and as long as it does not embarrass the force in any way, I would like to bring out the wages of the various ranks in the RCMP now and then, in the near future, ask the Minister when increases to the RCMP might be forthcoming. In particular I would like to hear the Commissioner set out what formula they use for pensions at the present time and what the former retired men of various ranks are receiving by way of pensions. If you would cover those three points I would not need to question you. I would be prepared to sit back and listen. I am sure the other members would like to hear this information.

The Chairman: Is that satisfactory?

Commissioner M. F. A. Lindsay (Royal Canadian Mounted Police): Thank you, Mr. Chairman.

In approaching the matter of pay perhaps I might be permitted first to give you a brief summary of the whole attack on this matter for the past few years.

In 1961 the Force agreed to new terms of reference in connection with pay which were followed for the first biennial pay review. These terms were contained in a letter of October 2, 1961, from the Secretary of Treasury Board to the Pay Research Bureau and covered rates of pay, working conditions and fringe benefits.

The Pay Research Bureau prepared three reports which were released in October and November, 1962:

- (1) Rates of Pay
- (2) Employee Benefits and Conditions of Employment in Municipal and Provincial police forces. This is the first time we seriously equated ourselves with other police forces in Canada.
- (3) The Evaluation of Some Aspects of Selected Pension Plans.

Updated reviews have been undertaken by the Pay Research Bureau for 1964, 1966 and 1968. These are the biennial pay reviews.

The national weighted average calculation was used as a guide in the first biennial pay review. In 1962 this national weighted average calculation compared a First Class Constable in the R.C.M.P. and municipal constables in various police forces. Functional differences have indicated the comparison of actual responsibilities should more properly be between First Class Constables of the RCMP and municipal detectives.

A recent survey of the London Ontario Police Department, which is an average one for Canada, demonstrated that municipal constables are not qualified to initiate and complete investigations of a criminal nature. Routinely, members of the RCMP take complaints and conduct investigations in their entirety even to the extent of prosecuting minor cases in certain jurisdictions.

Very little attempt was made to gather information on the basic functions of police forces during the first two reviews. In order to avoid this occurrence, the Force requested a pilot study of a typical municipal police force to emphasize the differences in functions of a member of our force and a typical municipal policeman. The pilot study covered the duties and responsibilities of various ranks in the London City Police Force. Actually the treasury staff went out to other police forces as well. Such a comparison of functions established the accuracy of comparing a First Class Constable in the RCMP with a detective in any municipal police force in Canada.

• 1120

The 1968 Pay Review, the one that is presently going on, is expected to be concluded during November, 1968. The national weighted average has again been calculated on information as at January 1, 1968 and the comparison with RCMP pay rates at the same date for (a) the Recruit Constable, and (b) the Senior First Class Constable, are as follows:

National weighted average	
Recruit	\$ 5,291
RCMP Recruit	5,200
	<hr/>
	\$ 91
	<hr/>

Mr. Woolliams: And that is for a First Class Constable?

Commissioner Lindsay: I am sorry, that is a recruit. This is of course for the purpose of inducing the recruits to join, and I think this is one of the things you wish to establish.

Mr. Woolliams: Commissioner, this is not what is suggested, this is what they are getting today.

Commissioner Lindsay: This is what we found at the present time.

Mr. Woolliams: Fine.

Commissioner Lindsay: An RCMP recruit receives \$5,200, which shows us down \$91. Now the national weighted average for a detective right across the country—municipal forces and so on—is \$7,691. For a Senior First Class Constable in the RCMP the figure is \$7,247, which shows us down from the weighted average, at the moment, \$444. These rates make no provision for any 1968 or 1969 pay increases which could place the Force further below the pay rates of the major police forces.

The weighted average for the 15 major Canadian police forces which has always been the pay formula equation that the Force insists should be used for pay negotiation purposes, indicates the following comparison for the bench mark positions of Recruit and Senior First Class Constable which are as follows:

15 Major police forces weighted average—Recruit	\$ 5,373
RCMP—Recruit	5,200
	<hr/>
	\$ 173
	<hr/>
15 Major police forces weighted average—Detective	\$ 7,833
RCMP—Senior First Class Constable	7,247
	<hr/>
	\$ 591
	<hr/>

In 1966 the pay of an RCMP First Class Constable placed our member in fifth place among the 25 best paid Canadian police forces. In 1967, even with a 4 per cent increase, effective January 1, 1967 the pay of an RCMP First Class Constable had fallen to seventeenth place among the 25 best paid Canadian police forces. In 1968 the Force is in thirty-sixth place. I have a list showing a comparison of all these forces.

Negotiations are underway at the present time and it is hoped that our pay proposals will place us on a competitive basis with the major Canadian police forces.

Mr. Woolliams: Just pausing for a moment, sir, what you are aiming at, in respect of your pay increases, is equality. You are not asking for more than the average wage rate but you are asking for equality?

Commissioner Lindsay: As I said, as of the present time in 1968 we are in thirty-sixth place.

Mr. Woolliams: Thirty-sixth?

Commissioner Lindsay: Yes. What we are actually asking is sufficient to bring us up to amongst the best paid police forces in Canada, plus a little allowance for a contingency. Of course unions in other police forces push for continued pay increases, and in the past we were successful in finally getting ourselves approximately in that position. However a little latitude should be allowed because these pay reviews come biennially whereas unions for forces like Montreal, Toronto, and Vancouver, of course have their pay under constant review.

Mr. Woolliams: When was the last pay increase the RCMP got?

Commissioner Lindsay: 1966, but there was an interim increase of four per cent approved effective January 1, 1968 and this was because we were falling into that position I just described.

The fourth biennial pay review is on at the present time and we expect to have an announcement before Christmas. We have had that four per cent, but, so that you will not misunderstand, that increase is shown in the figures I gave you. I have in effect given you the real picture as at the present time.

Mr. Hogarth: With the four per cent you are still in thirty-sixth place?

Commissioner Lindsay: This is correct.

Mr. Hogarth: How many are there, 37?

• 1125

Commissioner Lindsay: Ninety-five are surveyed all together and in addition two provincial police forces are included in this. They have a cutoff at municipalities of 20,000

population or more so there are 95 surveyed in the country, plus the two provincial police forces.

Mr. Woolliams: So that we will have no misunderstanding when this matter comes before the House and when we deal with the Minister in that regard, you want your rates brought up equal to the average rates paid across the nation for the same standard of work performed and responsibilities undertaken.

Commissioner Lindsay: Well our pay must be equated with the top fifteen police forces and, knowing that we probably will not have another review for two years, little latitude should be permitted there so that we will not be falling behind at a very early date in 1969.

Mr. Woolliams: Now while you are on the subject could you tell us how the pay of your corporal, sergeant, inspector and the various other ranks rate if they can be related with other police forces?

Commissioner Lindsay: I have the present rates for those other ranks—and the four per cent interim raise is included in these rates. The rate for our recruit Third Class Constable is \$5,564. Just to shorten this I will jump up to the First Class Constable in his fifth year, which is our senior constable.

Mr. Woolliams: Yes.

Commissioner Lindsay: The rate is \$7,754. Now the rate for the second year Corporal, which is the Senior Corporal is \$8,680, Sergeant \$9,709, Staff Sergeant \$10,451 and Sergeant-Major \$10,590. We have one Corps Sergeant-Major at \$11,075 a little better paid than a junior officer. Did you wish me to go on?

Mr. Woolliams: Yes, go on. We might as well cover it.

Commissioner Lindsay: A Sub-Inspector, \$11,482. I am very sorry; what I was quoting was the figure that we were shooting for right now. You have a little bit of advance information. This has not been negotiated.

Our Third Class Constable is \$5,200.

Mr. Woolliams: Yes.

Commissioner Lindsay: I will now jump to the First Class, fifth year \$7,247. By the way, these correspond to the figures I gave you before. Corporal, \$8,112; Sergeant, \$9,074; Staff

Sergeant, \$9,767. We have three or four Sergeant-Majors. Sub-Inspector, \$10,731; Senior Inspector, \$12,222; Superintendent, \$14,764.

Mr. Woolliams: How many of those have you got?

Commissioner Lindsay: We have 21 first-year superintendents, 11 second-year superintendents, 12 third-year superintendents. They will all reach that, I hope. A total of 44. And the chief superintendents; they are usually in command of the smaller divisions, such as in the Maritimes and so on. Chief Superintendents, of whom there are 14, \$16,765; Assistant Commissioners in command of larger divisions and directors at headquarters, 11 of them, at \$19,469; and there are two Deputies, one on the administration side of the house, one on the operations, at \$23,363.

• 1130

Mr. Gibson: Could you spell out a little bit what a deputy is? What is the full name of this rank?

Commissioner Lindsay: Deputy Commissioner.

Mr. Gibson: Thank you, sir.

Commissioner Lindsay: And we have one in charge of operations and one on administration.

Mr. Gibson: Thank you.

Mr. Woolliams: Could you from there—if we have covered the salaries, unless somebody has some questions—go into the pension plan, how the pension is set up? This may be a little complicated, but I presume—maybe I will ask this introductory question—are the pensions different in various categories for the periods in which various people have retired? When the pensions are increased, are they increased for retired ranks? Say, somebody retired twenty years ago, what happens to him?

Commissioner Lindsay: Let me approach this from another angle, from the complaints about the inadequacy of pensions. Quite often we have complaints by pensioners and even more frequently by widows, because they feel that their time, that is, their armed service time during wartime was permanent force service. Services in other police forces had not counted. We are very careful in this respect, that is, giving them an opportunity to elect or to pay for past services.

Now another thing. We have a very good widow's and orphan's pension part of our statute. This is to make up for the deficiency in the old Pension Act which was a non-contributory one—Part 3, we called it. But by Part 4 we provided this rather good widows' and orphans' pension, but it was wholly contributory. After people retire, what they quite often do—and it is against our advice—in order to make a down payment on a house, sometimes to buy a car, is to withdraw their contributions, and then later on they say: no pension. This is chronic. We have them in at various levels and plead with them to leave their contributions in. But they take them out.

There is another thing. They are given an option, and this is in writing and we insist that they sign it in the presence of a witness, and they refuse to pay for past service. There are other governments also contributing. The Newfoundland Government and the British Columbia Government are contributing, and they will contribute, but in some instances our people will not bother, they will not elect to pay for this past service, although the payments are really not large. And later on they complain. This is not pensionable service.

Mr. Woolliams: I presume that those payments too could be done by instalments at probably a very reasonable rate of interest.

Commissioner Lindsay: Oh, yes, at a very reasonable rate. They just cannot see. It is like some people who turn their backs on insurance. Now the next thing, and then I will try to close with your questions.

We are all plagued, and particularly our pensioners, with the inflationary tendencies in the Western World and inflation has bypassed some of these pensions. The complaints of our pensioners in this respect can be studied only in the context of pensions for the entire public service. This has been done, and some time ago, in 1964 or 1965, they did get a percentage increase. This was done after a great deal of study, and it is a very difficult thing to look for equity in this because 20 per cent of a \$65 pension does not help very much in this day and age. I did some research on this some years ago and found two corporals who had retired years ago. For twenty-two years of very faithful service, \$40 a month pension. Now these persons retired in 1929 or something, many years ago. Twenty per cent of that is not a great deal, but to try to find a formula to bring this up is a very difficult operation.

Mr. Woolliams: Are there not suggestions for negotiations at all in reference to try to remedy this inequity?

Commissioner Lindsay: Yes, we get them periodically following our Veterans' Association meetings, and they ask us if we will again carry the ball. We do, but it has to go to the Canadian Pension Commission for study in the context of the pensions of the armed forces and the entire public service of Canada.

Mr. Woolliams: Could you tell us how many RCMP at the present time of all ranks are on pension or retired?

Commissioner Lindsay: I had notes on that, but I will have to provide them later.

Mr. Woolliams: Well, you can give it to us at a later time.

Mr. Hogarth: I have a question, Mr. Chairman. Mr. Commissioner, could you tell us...

The Chairman: Just a moment, please, Mr. Hogarth. Is your line of questioning finished, Mr. Woolliams?

Mr. Woolliams: I am pretty well finished. I do not want to monopolize the Committee. I just have two or three more questions.

The Chairman: Go ahead.

Mr. Woolliams: Perhaps I can ask this question. What is the formula at the moment—maybe you have given it, but I did not quite follow it—of retirement at the present time for first-class constables and the ranks that you dealt with on wages? What is the formula? What percentage of salary? How does it work.

Commissioner Lindsay: It is 2 per cent per annum, and this is pretty much the same as in the public service and the armed forces. We have retirement ages. We have maximum service, and we have maximum age limits. The maximum age limit in the ranks—and sometimes a person can get 29 years in; this is the case with people in the old pension part—goes up to 29 years maximum service. Sometimes they are caught by the age limit. This is not frequent. Usually people join very young, so they are not often caught by the age limit.

• 1135

Mr. Woolliams: What is the age limit?

Commissioner Lindsay: For a Constable it is 56 years, Corporal 57, Sergeant 58, Corps

Sergeant Major and Sergeant Major 59, officer up to Deputy Commissioner 60, Deputy Commissioner 61. The age limit for Commissioner, I think, is on the books for 62 years. Under the old part they retire and get very good opportunities in industry and elsewhere, quite frequently at the age of twenty—and they can still do that under the RCMP Pension Continuation Act. The new RCMP Superannuation Act changed this to conform much more closely with the Public Service Superannuation Act, and there the maximum service, instead of 29 years, is 35 years, but the age limits are the same. So before 35 years some do get caught on the age limit.

Mr. Woolliams: What does a corporal actually retire on if his salary at the moment is \$8,112? What would he get if he retired with his age limit of 57?

Commissioner Lindsay: Let us say he goes up to 35 years under the new Act, and he came over from the B.C. provincial police or from the Newfoundland Rangers. He can go up to 35 years and he gets 70 per cent of that.

Mr. Woolliams: What is the minimum percentage?

Commissioner Lindsay: He can retire voluntarily at 25 years. Twenty-five years voluntarily, with 50 per cent, that is 2 per cent per annum. Here is where some of them really have no complaint. They get a business opportunity and they leave, let us say, at the minimum voluntary service period for leaving, which is 20 years. We have that weighted. There were a lot of them leaving years ago, so they put an inducement in the Royal Canadian M. P. Super. Act—Part III. Instead of 2 per cent you go up to 4 per cent from your twenty-first year to your twenty-fifth year, and then from the twenty-fifth year to the twenty-ninth year they drop back to the 2 per cent, but many of them that left at 20 years did not take advantage of the double rate of increase and then later on, of course, when they retired from their other position they found that their income was rather small. But they could have gone on and doubled the rate of build-up of their pension if they had served that extra five years. It really was put in there to look after, let us say, our senior instructors and our key men—our NCO's, let us face it.

Mr. Woolliams: Mr. Chairman, I have taken quite a bit of time and I do not want to monopolize the question period. I have pretty

well covered the situation I had in mind. I know there are a lot of other questions from other members so I will hand over the questions to somebody else.

Commissioner Lindsay: Mr. Chairman, one further clarification. That pay rate that we presently have under negotiation would be retroactive to January 1, 1968. Thank you, Mr. Chairman.

The Chairman: Mr. Gibson.

Mr. Gibson: I would first like to ask you, sir, dealing with the comparables, how the Ontario Provincial Police would compare with the R.C.M.P. in this list? I do not mean the exact figures, sir, and I do not want to put you to a lot of trouble, but are we close to them or—

• 1140

Commissioner Lindsay: The Ontario Provincial Police were tenth in 1966 and seventh in 1967.

Mr. Gibson: This was just as a matter of interest. That is fine, sir, thank you. How about number one? What is the number one force for pay?

Commissioner Lindsay: For a number of years it was Vancouver and today it happens to be Esquimalt.

Mr. Gibson: Thank you. Sir, is there any danger pay allowance given to an R.C.M.P. officer when he is involved in some shooting exploit or very dangerous work?

Commissioner Lindsay: He is given quite a bit of recognition and we can give him a grant—

Mr. Gibson: No, financial; is there any financial allowance?

Commissioner Lindsay: We can give him a grant from our benefit trust fund.

Mr. Gibson: And how many grants did you give in 1967?

Commissioner Lindsay: I will have to check that. I think it was two or three. I am told there were none actually given in 1967.

Mr. Gibson: Why were there not? Was there no work of the nature that would involve a grant being given?

Commissioner Lindsay: I am told there have been four or five given this year, and there were some last year, but they—

Mr. Gibson: In 1967.

Commissioner Lindsay: In 1967, no.

Mr. Gibson: Why were there none given in 1967?

Commissioner Lindsay: Perhaps it was not considered sufficiently outstanding, perhaps—

Mr. Gibson: What is the standard?

Commissioner Lindsay: Oh, outstanding bravery, being injured and going to hospital. We have done quite a lot for these fellows. One fellow involved in a bank robbery in—

Mr. Gibson: I am just probing here. I have no axe to grind at all, but as Crown Attorney I have worked with the RCMP. I am just exploring this and I am quite concerned about it. Why is it, sir, that you say you are working to bring the force to among the best in Canada in pay. Why not the best?

Commissioner Lindsay: That is what I say, we want some latitude to bring it up because we know there are pay negotiations in other forces.

Mr. Gibson: Is there any escalator clause in this pay scale for the cost of living?

Commissioner Lindsay: That is the purpose of the biennial pay review.

Mr. Gibson: When I have had more experience I will realize that this is in a bigger context.

Commissioner Lindsay: Yes, and the pay review committee assure us that they build in that factor.

Mr. Gibson: How is the danger pay established? Who decides on whether danger pay will be allowed?

Commissioner Lindsay: We do not have any such thing as danger pay. It is not danger pay.

Mr. Gibson: No, but you said, sir, that of of these grants were awarded and I want to know who decided that.

Commissioner Lindsay: The recommendation from administration will come to the Commissioner and that will be granted.

Mr. Gibson: Is it applied for or recommended? I want to know a little bit more about it.

Commissioner Lindsay: It is recommended up the line, and various other things have

been recommended. For instance, some of these fellows who have a lot of service and, let us say, have been in charge of detachments, they have been promoted summarily without a promotion board. We have a very formal procedure, and in instances where these fellows whom we actually know are fully qualified to carry additional responsibility, they will be promoted immediately. This has happened. Dealing with the man who lost his leg in the bank robbery on the West Coast, he was educationally qualified and we put him into the University of British Columbia Law School.

Mr. Gibson: How many officers were killed in 1967?

Commissioner Lindsay: I can tell you that in the past six and half years we have had nine murdered. I have a list here showing deaths for all reasons, including auto accidents, but these are actual murders. We have actually lost nine in the last six years.

Mr. Gibson: Did you say six years?

Commissioner Lindsay: Yes, six years.

Mr. Gibson: May I ask you this, sir. What negotiating procedures are available to the constables in respect to bargaining? I hope you will forgive me, but this is in summary.

Commissioner Lindsay: No, this is apropos. We are one of the few organizations in the country that—in the world, as a matter of fact—that have no union and the bargaining authority is the senior officer of the force. We make it absolutely clear to Treasury Board that we recognize our responsibilities in this respect and we have a very active pay review committee that checks on these things continually. This is the first thing we mention to the pay review committee of the Treasury Board, that they are in effect dealing with the negotiators for our force, and they have recognized that.

• 1145

Mr. Gibson: That is good, sir, and thank you very much.

The Chairman: Mr. Ouellet, please.

Mr. Ouellet: Thank you, Mr. Chairman. Commissioner, I understand that steps have been taken in order to promote bilingualism in the force. I would like to know what they are, how successful they have been and how bilingualism stands in the force at this moment?

Commissioner Lindsay: At the present time we have 24 fully-bilingual senior officers in the force out of a total at the moment of 231, I think. It is in excess of 10 per cent. The bilingual members in the force number 964 and they are practically all working in the Province of Quebec.

Mr. Ouellet: So the total number of—

Commissioner Lindsay: It is 964 from a total of 8,651. We watch very closely that we do not fall below 10 per cent in our recruiting of bilingual members. At the present time we have 46 fully bilingual members of the force in training. We have received 1,386 applications since April 1 this year, a large number of which are bilingual, so we are keeping well above our 10 per cent in recruiting.

If there is any suggestion we are falling below that, we have various procedures we follow. For instance, we set up booths at agricultural fairs in the provinces. We advertise. Sometimes we send our members to the schools. I am now talking about recruiting. You have asked me about bilingualism in the force generally and I am talking right off the top of my head here. We have taken a great many steps in the past two years. For instance, our national police services at headquarters for some time now has been on a 24-hour basis and it serves all police forces in Canada and it is a bilingual service. We have made arrangements for the publication of our Gazette—and this has been an expensive operation—on a bilingual basis, and as fast as we can get translators we are translating our instruction books. We have made absolutely certain that our officers in Quebec are bilingual. There is only one officer there now who is not fully bilingual, and he is rapidly approaching that state, many other areas we have sent people on these courses, and we have issued instructions within the last few months that any member of the force may submit reports, or *présis*, in the language of his choice. We are geared for that. This is now particularly applicable of course to C Division, our Quebec Division and New Brunswick.

One of the things that have been hampering us, of course, is the matter of competition with other departments in engaging competent translators in our headquarters. We have them in nearly every department. We are testing recruits now in either language. We have bilingual counsellors in our training divisions. I might mention that our recruits, as a matter of fact, appreciate going to West-

ern Canada, particularly the ones from the Province of Quebec, because there they do become proficient in English and of course later on if they leave the service they get vastly better positions.

Mr. Ouellet: Have the applications coming from Quebec increased recently?

• 1150

Commissioner Lindsay: I check that over about every two weeks and they are keeping up to standard. I have not got the exact number out of these 1386. One of the points to keep in mind is that we are not the provincial police for the Province of Quebec. We have about 600 plus members in the province, and of course we are not the provincial police force, so that is why the 10 per cent figure of bilinguals may seem a bit low.

Mr. Ouellet: Are the RCMP men patrolling Parliament Hill bilingual?

Commissioner Lindsay: That is a very good question and of course one we have had many times. Whenever the A Division can, that is the Division here, whenever they have the manpower, of course they do put bilinguals on the Hill, but this is a two-edged sword. I do not think it is a mystery to anybody here that this is not considered one of the outstanding, or let us say, the most challenging duties, and if we peeled off bilinguals and put them on Parliament Hill, we would have real trouble. We could not keep them.

Mr. Ouellet: I am glad you are mentioning it, because that was the second question I was going to ask you. So you are suggesting that you have had complaints from some of your men about being obliged to be on the Hill.

Commissioner Lindsay: No, they do not complain. Our morale is high.

Mr. Ouellet: This brings me to another question I was going to ask you. Do you feel that it is really necessary for the force to patrol the Hill and the NCC roads? Would you prefer to get out of these duties?

Commissioner Lindsay: All I can be is factual, and, of course, we have been out of them a couple of times since I have been in Ottawa, and each time a lot of trouble has developed, and we have just been instructed by our Minister of the day to resume duties. This is what has happened. We have been out of them two or three times.

Mr. Ouellet: I have tough luck with your man on the Western Parkway so there is no good prospect for me in the near future, is there? Could I ask you just another question on another subject? What is the RCMP's stand on the expungement of criminal records?

Commissioner Lindsay: Well, that is not a matter for me to discuss because, of course, it is government policy. We have stated our views, of course, to our Minister.

Mr. Ouellet: You prepared a report to your Minister on the subject?

Commissioner Lindsay: We keep him informed on any subject.

The Chairman: Mr. Ouellet, we will be having a meeting, at which time we will go into this question of expunging criminal records in great detail.

Mr. Ouellet: All right, thank you, Mr. Chairman.

The Chairman: Mr. MacEwan.

Mr. MacEwan: I notice, Commissioner, on page 479 of the Estimates, there is an increase in the estimated amount to be paid for pensions. Last year it was \$5,761,000 and this year it is \$6,407,000. Could you explain the reason for that? Do you anticipate higher pensions or what is the reason for the increase of about \$645,000?

Commissioner Lindsay: Could I have that reference, please?

Mr. MacEwan: Yes, page 479.

Commissioner Lindsay: Page 479, thank you. That increase is to cover the additional strength of the force from previous years. Actually in these Estimates there are 641 additional staff included. That includes 60 whom we were instructed to put into operation for the securities fraud following the Commission that sat. They asked us if we could become operative and we did. This is the benefit of some of our contracts because we could peel off fully trained men last year, put them on this, and they have been fully operative for some time in all the cities of Canada where there are stock markets. There are 60 included there and these Estimates catch those up. There is a total, including those 60, of 641 additional staff and, of course, when they come on strength, provision has to be made in the Estimates to pick up their pension payments.

• 1155

There is another point in that too. I described the various pension parts and that particular part is Part III which is non-contributory. Now that became defunct. Anybody who joined since November 1, 1949 came under the Superannuation Act and commenced contributions and the Government made matching contributions. Previously the Part III pensions came out of consolidated revenue but, of course, now the contributions go into the RCMP Superannuation Act. So, as the non-contributory fellows drop out of the force and this is pretty rapid now, the new people engaged in the force have matching contributions put into the Superannuation Fund. So that shows a bit of acceleration there.

Mr. MacEwan: What contribution is made—I suppose it is based on the rank of an officer—by the officer for pension purposes?

Commissioner Lindsay: Well, let us see. The old Part II—and this goes back to 1905—5 per cent; now, again, this is phasing out. Now the new rate is six per cent and that is for all ranks, the same as the Public Service. Of course, the government makes a matching contribution and that is why the acceleration shows up here.

Mr. MacEwan: I just have a couple of short questions, Mr. Chairman, but not on this particular topic.

On the matter of the Royal Canadian Mounted Police policing municipalities and so on, how is that done? Is there an agreement made with the province or with the municipality? Could you explain that, please?

Commissioner Lindsay: This varies from province to province. I will give you an illustration. Some of them are three-way contracts: the municipality, the province and our Department. Let us take Corner Brook, Newfoundland. There the payment is actually made. Under the Corner Brook contract it is made by the provincial government of Newfoundland. In some other provinces it is a two-way agreement between the municipality and our Department. Sometimes they go through the attorney general of the province and sometimes they do not.

Mr. Cantin: Are they taking part in the negotiations that are going on?

Commissioner Lindsay: I beg your pardon?

Mr. Cantin: Do they share in the negotiations that are going on now? Do they take part in that?

Commissioner Lindsay: No, that is paid. These are the contracts that we have with the municipalities. They were all negotiated in 1964 at a federal-provincial conference when Mr. Favreau was Chairman and they were all put on on the same date in 1966 so that they are renewed on the same date. We have 140 of them and they are renewed on the same date each year.

Mr. MacEwan: How many provinces does the Mounted Police actually cover?

Commissioner Lindsay: We have taken the ten provinces, and we actually have a contract with the Northwest Territories. For the Yukon, we drew one up but they never signed it, but we have the same thing there—in the Yukon and Northwest Territories—so really we say contracts with eight provinces.

Mr. MacEwan: Has there been any change, as far as the Mounted Police are concerned, in more or less centralizing their detachments? I am thinking of towns in the Province of Nova Scotia such as New Glasgow and Pictou, 15 miles apart. What has happened is that the Mounted Police under contract patrol the town of Pictou, but there has been a change. I noticed the Town Council had some debate on it—the fact that there was not adequate coverage of the town and that a number of the constables were centralized in New Glasgow. I think there are some 10 to 15 there now. Has there been any change in the last few years on that, Commissioner?

• 1200

Commissioner Lindsay: Well, a change, yes. But now we have actually come up with the hub concept of policing. I had an opportunity to talk this over with both the Attorney General of Nova Scotia and his Deputy. Under this revised contract, we will police any municipality. It used to be under 1,000 population under the provincial contract, but now it is under 1,500. We have many more of these small towns to police under the provincial contract. We do that, we attempt to do it, through the hub concept. There is greater efficiency in having, say, the ten constables you mentioned, stationed at the one centre. Perhaps we will have one man in plain clothes, maybe two, to investigate serious crimes continually in the detachment at the place, and they can go into the serious crime in this whole area including a number of these towns, let us say with 1,300 or 1,400 population. That is the hub concept. Now, the

pressure in the province is always, as you can appreciate, to have active boards of trade approach the attorney general of the province, and ask through their own local detachment. They feel a little less naked, a little more protected. That cuts across the hub concept. But we are trying to stick to the hub concept as much as possible, and the Attorney General did not press it.

Mr. MacEwan: Are you using a number of unmarked cars in your work? Do you find this an effective way to deal with highway matters?

Commissioner Lindsay: No, it is not our usual way of dealing with them at all. But if any of our personnel see flagrant infractions of course they will check anybody up at any time. But this is definitely not our highway patrol operation.

Mr. MacEwan: They are used?

Commissioner Lindsay: It is not the policy. We have some. And, of course, the attorney general of the province under whom this comes is always aware of this.

Mr. MacEwan: And finally, how do you find recruiting generally for the force? Do you find it keeping up quite well?

Commissioner Lindsay: I gave you those figures; I think it was 1,397 applicants we have had since April 1 of this year. I have a breakdown here for you of the educational qualifications of these people. We have engaged some university graduates this year. They were quite willing to come in as Third Class Constables, but we have changed our policy. Because of their qualifications we bring them in immediately as First Class Constables, and we are watching the reaction amongst the others to see if there is any loss of morale. Here is a fellow going through the same operations, the same cleaning of barracks floors, getting considerably higher pay than the others. They are quite happy. They recognize the fact that this fellow has university degree and he fits right in. Now, of course, he will have advantages later on because he can go into our university training program, if he shapes up.

Mr. MacEwan: Do you still send personnel from the force to law school?

Commissioner Lindsay: Yes, we do. We have 30 attending various faculties at the present time. 30 throughout the force. We

have 13 law graduates in the force at the present time. We have 111 of our own graduates serving in the force in key positions, many of them on what is called high pressure crime—National Crime Intelligence Unit and crime intelligence, bankruptcy heading up the fraud squads.

Mr. MacEwan: Thank you very much, Mr. Chairman.

Mr. Hogarth: Commissioner Lindsay, some of my remarks are a continuation of the line of questioning taken by my hon. friend. What is the turnover? How many are going out and how many are coming in?

Commissioner Lindsay: We brought management consultants into our headquarters to examine all facets of our administration, and this is one of the things that astounded them. Our turnover is the lowest anywhere in the public service. Three years ago it was 589—I am talking off the top of my head—two years ago 529 members, and last year it dropped to 448. I am informed that this year it is dropping again. Nearly all—I say nearly all—let us say 50 per cent are retiring to pensions. It includes the pensioners. The turnover rate is remarkably low and I hope it stays that way.

Mr. Hogarth: Are you satisfied that the force is attracting a sufficient number of qualified recruits, that is to say, are young Canadians going to the force for work? Are you satisfied?

Commissioner Lindsay: Well, the picture is much better than it was when I was responsible for this six or seven years ago. We are getting a good quality of recruit and, as I say, some university graduates. Many others have partial university, and complete their university on their own time.

Mr. Hogarth: The fact that you are thirty-sixth on the pay scale of the national average would not appear to be having an appreciable effect on the attraction of recruits or the members leaving the force.

• 1205

Commissioner Lindsay: Well, we are always trying to go for the quality of recruits, and we are subject to criticism that we do not go for more university types. This is really what we are after. We are getting a good run of recruits, but we would like to attract more of the university types.

Mr. Hogarth: That being so, your suggestion is that the basic pay will have to go up to attract a higher calibre of young man into the Mounted Police as opposed to industry?

Commissioner Lindsay: Oh, yes, this is logical and, by the way, after every pay increase our statistics show an upturn in our recruiting, and also a downturn in the few members of the force who purchase their discharges.

Mr. Hogarth: Now I have concluded, and you can correct me if I am wrong, that the thirty-sixth slot for the Mounted Police is entirely based on the basic pay and has nothing to do with any consideration of fringe benefits or anything of that nature. Is that correct?

Commissioner Lindsay: Fringe benefits were costed very accurately in 1962 in connection with our biennial pay review that year, and they were found to be comparable with any of the other police forces in the country.

Mr. Hogarth: So your suggestion is that that position of thirty-sixth is assuming equality and apparent equality and fringe benefits given to all the other forces?

Commissioner Lindsay: Yes, that is right. That, to me, is an accurate comparison, and the pay review committee of the Treasury Board staff have accepted that as comparable.

You might like to know what fringe benefits are included in there. We have medical services for members and these have been very accurately costed. The Department of Veterans Affairs provided comprehensive medical and dental services to members of the force. These services are fully paid by the RCMP. This is for regular members only. During the last completed fiscal year, \$1,187,000 was paid to the Department. This is all medical and dental services for regulars.

They have a group surgical-medical insurance plan. That is contributory, of course, and voluntary. It is available to all our members across Canada. The government contributes approximately 50 per cent of the premiums that are paid. We have death benefits. Our regulations provide that the estate of a member who died while serving is entitled to receive two months pay after he has served two years. The estate or the widow gets two months' pay. In situations where members have one year but less than two, the balance of pay for the month of death is paid under this provision. Then, of course, we

have our annual leave. Under 10 years service they get 21 days and after 10 years service they get 28 days.

Mr. Hogarth: Without going into all the details of that, it is your suggestion that other police forces with which you have been compared in order to arrive at this figure of 36, are, more or less receiving similar benefits, so that the thirty-sixth position is realistic.

Commissioner Lindsay: This is taken as a realistic figure.

Mr. Hogarth: I see, fine. Can you tell me, sir, if you are satisfied from a law enforcement point of view that you are getting the complete co-operation of the provincial and local police forces in this country?

Commissioner Lindsay: Our police co-operation has come a long way in the last three or four years. We are getting a lot more sophisticated hardware and it assists us in contacting them and their feeding information into us. We also have better training so that we can assist them in the preparation of briefs, and all that sort of thing. Recently, and I could talk at great length on this, to further this type of co-operation we have our wire photo service. This is a sophisticated tool which is available to help us and, of course, to help feed in the material quickly from the city and the police forces and the two provincial police forces. It is used. We are the Interpol NCB, the National Central Bureau. They feed us anything. For instance, information concerning criminals that might have departed their cities, and we have a direct link with Interpol. We have had some "hits" and very good "hits" in Natal, South Africa, Italy, Switzerland and Belgium recently. We brought people back to the Province of Quebec and the Province of Ontario. These people were located through Interpol. We have had close co-operation inside the country and outside the country. We have extended our Telex system to our major detachments as well as to our sub-divisions and divisions and, of course, the city police can get on our Telex and feed that information in.

• 1210

I mentioned the crime intelligence units. In Montreal, Toronto and Vancouver we have crime intelligence units at the international airports. We have one member, let us call him a detective, from our force and each of the other police forces in the area. This is of

great assistance now that air travel has increased so much.

Mr. Hogarth: In your view is there anything that we could recommend to the House that would assist the Royal Canadian Mounted Police in increasing the co-operation or the assistance of local and provincial police forces, as well as American and other international authorities, or is there anything that your force might suggest is required to expedite or assist?

Commissioner Lindsay: We always enjoy the co-operation of the House and, of course, any recommendations that we have are made to our Minister and we feel that we have very good support.

Mr. Hogarth: Is there anything you might advise us about today that you think it imperative the House act upon, if we see fit to do so? In short, is there anything you need to expedite this concept of communication with local or international police forces?

Commissioner Lindsay: Oh yes indeed, there is.

Mr. Hogarth: Tell us about it.

Commissioner Lindsay: There is one in particular, and we have had the support of our Minister on this, and that is the very sophisticated and expensive matter of computerization. This is just a bit embarrassing to us. We were very generously given a terminal of the main computer of the Federal Bureau of Investigation in the United States, and we get their information from that computer. The information returns in less than two seconds after a message is sent in. It is manual at our end and, of course, it is computerized at the other end. This, of course, is used in connection with travelling criminals. There is also the National Automobile Theft Bureau, which we have at our headquarters and, of course, which they also have down there, and this is paying off. We made two very important strikes last week on the FBI computer.

Mr. Hogarth: Your suggestion is, then, that you should be computerized at the national level here to assist in communication with local and provincial police forces as well as international police forces.

Commissioner Lindsay: We are working on it, mind you, and we have support on this.

Mr. Hogarth: Is there any other field in which you think the Parliament of Canada could assist you further in this aspect of your work?

Commissioner Lindsay: Of course, anything else I would bring to the attention of the Minister.

Mr. Hogarth: I am concerned with the things you might want to bring to the attention of this Committee, that we should all be...

Commissioner Lindsay: I have to act under his guidance. You can appreciate that.

Mr. Hogarth: In dealing with the work of the Royal Canadian Mounted Police, is it your suggestion that police work and law enforcement could be enhanced by the expansion of the federal force into the small local communities or even into other provinces that have separate police forces?

• 1215

Commissioner Lindsay: This is a very extensive question. I can explain what is actually happening in connection with these municipal contracts and why the provinces were so very anxious in 1964 to negotiate on it. You see, at the present time criminals move at such a rapid pace and crime is so sophisticated that the untrained small-town policemen cannot cope with it. In a small force of two or three members, and so on, they really have no opportunity for promotion. They have limited training and many of them, seeing no new opportunities and their pay not being raised, have just folded up. When this occurs in a contract province there is a vacuum, and we cannot afford to have any vacuum in this country, so we move in.

Mr. Hogarth: You move in on request, unless there is...

Commissioner Lindsay: Oh yes, we move in. It is always a very urgent, almost a desperate request, and we move in. We do not have the manpower to do foot patrols, shaking door knobs at night, this sort of thing, but we do move in for the investigation of offences. That is, breaking and entering, burglary and robbery. We are right there in these areas. They ask for this, and what they did to two provinces in particular is they brought in these investigational agencies which were relatively untrained, carrying firearms, and they got into trouble in a number of places—I am thinking particularly of Manitoba and Saskatchewan—and they were very anxious for us to take over. That is why there was an agreement between the Minister and the Attorney General of the province that

where they were in such a situation that we would first move in on a temporary basis—which stretched our capability—and then they would sign contracts. This is what has been happening. This is why we went from about 120 contracts to about 140, to really fill these gaps. We still have some of these. We have one or two in Nova Scotia, where we are still policing on a temporary basis pending a formal contract.

Mr. Hogarth: My concern, Mr. Commissioner, is not the occasion when you move in at the request of the municipality, it is whether or not you believe from a law enforcement point of view that you should be in the municipality in any event. Would that improve law enforcement in Canada?

Commissioner Lindsay: It makes for efficiency because we put our own fully-trained men in there. They have all sorts of backup. We have a modern radio patrol and our highway patrols can check out. In other words, we get better co-operation. Furthermore, it works two ways, because in these contracts these people are reserves and we can use them. At Expo last year we had contracts for the additional men we sent to Expo on these security squads. We were asked to move in and build up relatively quickly for this kind of sophisticated anti-crime move and we were able to do that with 60 well-trained men all trained in their contract provinces and they moved out very quickly. They were fully trained and they adjusted very quickly.

Mr. Hogarth: Are facilities available on the national level for the training of local city policemen and provincial policemen by the Royal Canadian Mounted Police?

Commissioner Lindsay: Training is a very extensive problem. I could talk a long time on that. However, we have trained many of them in the past. At the present time we are particularly concentrating on the crime front; the identification staff, and we have been giving identification courses to various police forces across the country. I had Director General Gilbert in the office the other day and I introduced him to one of his own men from the City of Montreal who is on one of these identification courses. In other words, this course covers photography, fingerprinting and this sort of thing. That is one field. We also have what we call SIT courses, senior instructional training courses, and we are operating those. There is one operating within

three miles of us now. We have senior NCOs from these forces brought in and we train them in instructional techniques so they can go back and train their own forces; let us say, their own detectives.

Mr. Hogarth: I take from your remarks that the broad general training of police officers depends upon the force they join. Is that correct? There is no standard of police education throughout the country?

Commissioner Lindsay: No; this is perfectly true.

Mr. Hogarth: Would law enforcement be improved by the creation of a national police academy to train all policemen to the same standard?

Commissioner Lindsay: Yes, it would; and we are working on it. We are right into it. This is one of the recommendations, of course, of the Federal-Provincial conference on organized crime.

Mr. Hogarth: Has there been any impediment to the suggestion that all policemen in the country, regardless of the force they serve, be trained to a given national standard? This is almost comparable to the National Building Code.

• 1220

Commissioner Lindsay: We are in a different position altogether from the UK. There there is a Home Office 50 per cent subsidy to police forces. They do not get to draw that subsidy unless they have their staff at all levels adequately trained on a national basis. They have this cudgel, or this handle.

Here, of course, the police responsibility is in the Attorney General of the province and we have not got that type of control.

In the United States we are at a disadvantage for a different reason. There, by presidential arrangement and as a result of the President's Commission on Crime, they are allowed to offer all sorts of inducements, which, of course, are very expensive; that is their living allowance, travelling expenses, and so on. This is quite expensive. Therefore, they draw to the national FBI academy trainees from various police forces.

We are researching this at the present time. We have revamped our entire training from top to bottom. We have a Canadian Police College classroom in operation right now out here. We have reactivated it after two years.

This, again, is a pilot project, and we will run two or three for our own men—there should be three—because there is an urgent requirement for more sophisticated training.

If this turns out to be the type of course we think it is going to be we will ask for trainees from other Canadian police forces.

Mr. Hogarth: Do you train police officers of special...

Mr. Gilbert: Mr. Chairman, on a point of order.

The Chairman: Yes.

Mr. Gilbert: This was the first round of questioning. Many members have not had the opportunity...

Mr. Hogarth: I am sorry. I have several other but I am...

The Chairman: Yes; should we continue until one o'clock and try to complete this line of questioning or should we adjourn at, say, 12.30 p.m. and come back at 3.30 p.m. on Monday? I would however, ask that members keep their questions as brief as possible.

I know there is much interest in this subject and that it is a difficult one, but if we can hear as many members as possible we may be able to finish it today.

Mr. Gervais, please.

Mr. Gervais: Before I ask my question Mr. Chairman, we have an *ad hoc* meeting at one o'clock on the Omnibus Bill.

The Chairman: Yes, I realize that.

Mr. Gervais: We are supposed to have lunch before it.

Many of my questions have been answered but this is a more detailed one. Is anything being done to try to intercept this obscene literature that is flooding the country, inviting people to purchase pornographic films from Denmark? They are all mailed in Montreal, or Winnipeg, or Vancouver, but the reply is addressed to Copenhagen.

Commissioner Lindsay: There is no evidence whatsoever that they are actually coming from Copenhagen, Denmark. We have taken this up, on an Interpol basis, with the head of the Danish police. It could be coming from there, but it is not.

This was discussed extensively when Director Gilbert came from Montreal the other day

because we have much of this sent to us by other Canadian police forces in western Canada. Strangely enough, this literature is not flooding Montreal. The Montreal postmark—we know who it is, and it is coming from Montreal, but for some reason they are not circularizing Montreal. They are, however, circularizing practically every other city in the country.

Mr. Gervais: I am in Sherbrooke, one hundred miles from Montreal, and everybody is getting it.

Commissioner Lindsay: Yes.

Mr. MacGuigan: Sir, did you say you know who it is?

Commissioner Lindsay: They have been before the courts before.

The Chairman: Are there any further questions to the witness? Mr. Gilbert?

Mr. Gilbert: I thought my friend, Mr. Chappell, was ahead of me.

The Chairman: Mr. Chappell?

Mr. Hogarth: You stopped me. You have had your chance and you have turned it over...

Mr. Gilbert: No. Much like yourself, Mr. Hogarth, I have a long line of questioning. I did not want to take too much time. If Mr. Chappell wishes me to go ahead I will be delighted to do so, but, as he says, he did ask first and I will yield to him, Mr. Chairman.

Mr. Chappell: Thank you, Mr. Gilbert.

Mr. Commissioner, the answers to my first questions may be as short as you like. They are for general information before I go into two subjects.

How many provinces do not use the services of the RCMP?

Commissioner Lindsay: The two central provinces, Ontario and Quebec.

Mr. Chappell: Are the officers and the more senior personnel mobile from province to province, or do they stay in the various provinces.

Commissioner Lindsay: They are mobile. Actually, they are based in the provinces.

Mr. Chappell: Is there any difference between their allowance for living expenses in the city and living out in the country in Saskatchewan?

• 1225

Commissioner Lindsay: There is no difference in the living allowance.

Mr. Chappell: There is no difference in pay?

Commissioner Lindsay: There would be a problem if there were, because we would have difficulty in springing people out of those places where we had established liberal allowances.

Mr. Chappell: The point I wish to make is how many...

Commissioner Lindsay: May I qualify that answer, please? We have northern allowances, of course.

Mr. Chappell: Yes.

Commissioner Lindsay: Isolated post allowances.

Mr. Chappell: How many on your staff are so qualified in forensic training as to be able to handle a murder case where, say, poison is involved?

Commissioner Lindsay: We have, of course, crime detection laboratories throughout the country. I would have to check on that particular forensic group.

Mr. Chappell: It used to be that three basic poisons were used. Now there are probably over a hundred. I wish to question you in some depth on this.

Across Canada how many officers could be sent out on a murder case in which poison was suspected?

Commissioner Lindsay: The average unit in each one of these five crime detection laboratories...

Mr. Chappell: May we have some differentiation here?

Commissioner Lindsay: We have a forensic chemist in every...

Mr. Chappell: I am talking about how many are trained. I am concerned about this not only at your level but at the provincial and municipal levels. How many are sufficiently trained in forensic medicine to recognize, when they first see the circumstances surrounding a death, that poison may be involved?

Commissioner Lindsay: Of course, the first answer is that all of them are trained, although not in depth, in forensic medicine. That is in our basic recruit-training. Then in their intermediate training they get more of this.

In this 12-week CPC course that we have this will be featured largely, because this is straight police training. They will get lectures from experts. Now, how many it will...

Mr. Chappell: Do you give your own courses, or do you hire people who have had university training in forensic medicine? That is for the man who actually goes to the scene of an alleged murder.

Commissioner Lindsay: We do both. That is, we have outside lecturers in forensic chemistry—forensic medicine—and we have our own men who are highly trained. We have two Ph.D.'s in our laboratory here who came up right through our own force.

Mr. Chappell: I will put my question frankly. I hope it is a fair question and should be put to you and not to the Minister.

I have been discussing at another place the need for perhaps a four-year course in forensic medicine to make these men available to municipalities, Ontario Provincial Police, Quebec and the RCMP. Can you comment on whether there is a need for a four-year course on this subject?

Commissioner Lindsay: Yes, you are right; there is a definite need for this. At the moment we have one of our men down in the United States taking one of these courses so that he can come back as an instructor.

Mr. Chappell: There is something at the University of Toronto, but it is not quite that, is it?

Commissioner Lindsay: No, not quite that; as a matter of fact, when we have a scientific paper prepared...

Mr. Chappell: Is there a need for one of the universities to give a full four-year course on investigation of crime?

Commissioner Lindsay: That is a different thing. Now we are into something else.

Mr. Chappell: Well, in forensic medicine and investigation?

Commissioner Lindsay: On forensic medicine.

Mr. Chappell: There is just one other subject I want to deal with briefly, mainly out of curiosity. You said the hardware today is much more sophisticated—that is obvious—and would be bound to increase the budget.

Commissioner Lindsay: If we went on the normal working day.

Mr. Chappell: No; sophisticated hardware, better equipment...

Commissioner Lindsay: Oh, better equipment, yes.

Mr. Chappell: ...is bound to increase your budget.

Commissioner Lindsay: Yes, it would increase the budget.

Mr. Chappell: Is that reflected in any respect in a lowering of the number of personnel you require, or is it all reflected in greater efficiency?

Commissioner Lindsay: We have had a very extensive study done on that and we have a graph. Now, for a time there will not be any lowering of the numbers of bodies we have employed. After a time the number of bodies would drop away. As we get all of our name index and our stolen automobile...

• 1230

Mr. Chappell: So the long-run objective is that there will be more equipment and fewer bodies?

Commissioner Lindsay: This is the long-range objective.

Mr. Chappell: Thank you; I have no more questions.

The Chairman: Mr. Gilbert, please?

Mr. Gilbert: Thank you, Mr. Chairman. Mr. Commissioner, you are in charge of the enforcement of the Opium and Narcotic Drug Control Act. In the past the Act covered the hard drugs, as they call them, such as heroin and opium. Now we have had a tremendous increase in drug offences with an increase in the use of marijuana. I would like to have a report from you with regard to the increase in crime in drug offences in Canada, and what steps your Department has taken with regard to increasing your forces and keeping this serious problem under control.

Commissioner Lindsay: The Minister, I think, mentioned something about the

increase in crime and whether he specifically mentioned the...

Mr. Gilbert: I would like it in the drug field, Mr. Commissioner.

Commissioner Lindsay: I will give you an accurate picture here; it is very brief.

During the period April 1, 1968 to September 30, 1968 the force entered prosecution in 1,414 instances.

Now, these are broken down as follows: heroin and other opium-type drugs such as demerol, cocaine, morphine and methadone—241 charges for illegal possession and 30 for trafficking; marijuana, 887 for illegal possession and 177 for trafficking; Food and Drugs Act offences, which include controlled drugs and LSD, 79 cases.

That is the picture right up until September 30—from April 1 to September 30.

Mr. Gilbert: There has been some talk of transferring marijuana from the Act to another act. What is your opinion of this suggestion?

Commissioner Lindsay: I am sorry; this is a matter that is being studied, obviously, by the Department of National Health and Welfare and it is a matter of policy. I am afraid I would not attempt to answer that.

Mr. Gilbert: What about marijuana? I notice there are 887 cases, which I am sure if you were to compare that with other years is a very sharp increase and, as you know, many young students have been charged and convicted and thereby have criminal convictions for the rest of their lives.

Commissioner Lindsay: They have a Food and Drugs Act conviction.

Mr. Gilbert: Which is a criminal conviction, Mr. Commissioner?

Commissioner Lindsay: Yes.

Mr. Gilbert: This is a very serious problem and I would like to get your views with regard to this problem of marijuana. Just how do you, as a Commissioner, attempt to control this problem?

Commissioner Lindsay: I will give you the view on this and I can give it straight from Interpol and all the countries in the Western world. I will give you the Interpol view and this is in comparison with the heads of national police services in 103 countries, and

that is that it is a very serious problem. I think you may have read in the press the other day of the young man of 23 years of age who died from overdose of heroin. I believe it was in one of the Eastern cities.

He had told our investigators that he had started that by smoking marijuana. Our people have estimates that 70 per cent of those who have died or become chronic addicts on hard narcotics started on marijuana. It highlights why the police are rather interested in this.

Mr. Gilbert: Have you had to have a sharp increase in the number of officers with regard to this problem?

• 1235

Commissioner Lindsay: Yes, we have added to our drug squads. We have been working in very close co-operation with the drug squads in some of the major cities, Vancouver, Toronto and Montreal—they are the three. In the other cities this drug problem has been on the increase and there we have built up our strength on this type of work, let us say to fill the gap that had not been filled by the local city police force.

In the year 1963-64 we had 74 members on this, and in these estimates we have 89. In addition we have small drug squads in Hamilton, Ottawa, Windsor, and Saskatoon plus the 89.

Mr. Gilbert: What about the prosecution of these cases? At one time it was done by persons appointed by the Department. What is the process now? Is it still the same?

Commissioner Lindsay: There are federal offences, and the prosecutor is a federal appointee. The Department of Justice assisted us by setting up staffs in some centres; Vancouver and Toronto are two that I happen to know of.

Mr. Gilbert: So you now have staffs in these centres and they process the offences?

Commissioner Lindsay: Yes, and elsewhere there are special appointees.

Mr. Gilbert: I see. Mr. Chairman, I think I will just leave that subject there and let somebody else ask questions.

The Chairman: What is the wish of the Committee? We have had fairly extensive questioning. We could adjourn at a quarter to one and complete this estimate if the Com-

mittee agrees. Then on Monday at 3.30 p.m. we would have officials of other departments.

An hon. Member: How many more questioners are there?

The Chairman: Well, there is you, Mr. McQuaid. Are there any more questioners?

Mr. MacGuigan: Can we not ask them to come back at the beginning of the next meeting?

The Chairman: This is what I am trying to ascertain—the feeling of the Committee. Do you feel they should be brought back on Monday at 3.30 p.m. or can we...

Mr. McQuaid: I think they should be back, Mr. Chairman, for those of us who have not had a chance to ask our questions. I suggest in a case like this where there is a long line of questioners that for the first round questions be limited. Some men have used up 20 to 25 minutes here this morning, while other members have not had a chance to ask questions at all.

The Chairman: We can do it either that way or have each person ask questions extensively to complete his line of questioning. If it is the wish of the Committee, then, I think perhaps it would be sensible to adjourn now and resume at 3.30 on Monday.

HOUSE OF COMMONS

First Session—Twenty-eighth Parliament

1968

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. DONALD R. TOLMIE

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 4

THURSDAY, NOVEMBER 7, 1968

Revised Main Estimates for 1968-69,
relating to

Correctional Services, the Royal Canadian Mounted Police
and the Solicitor General.

WITNESSES:

From the Royal Canadian Mounted Police: Commissioner M. F. A. Lindsay;
Messrs. W. H. Kelly, Deputy Commissioner (Operations); B. Lynch,
Financial Officer.

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UNIVERSITY OF TORONTO

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. Donald R. Tolmie

Vice-Chairman: Mr. André Ouellet

and Messrs.

Blair,
Brewin,
Brown,
Cantin,
Chappell,
Gervais,

Gibson,
Gilbert,
Hogarth,
MacEwan,
MacGuigan,
Marceau,

McCleave,
McQuaid,
Rondeau,
Schumacher,
Valade,
Woolliams—(20).

(Quorum 11)

Fernand Despatie,
Clerk of the Committee.

ORDER OF REFERENCE

MONDAY, November 4, 1968.

Ordered,—That the Standing Committee on Justice and Legal Affairs be authorized to sit while the House is sitting.

ATTEST:

ALISTAIR FRASER,
The Clerk of the House of Commons.

MINUTES OF PROCEEDINGS

(Text)

THURSDAY, November 7, 1968.

(4)

The Standing Committee on Justice and Legal Affairs met at 9.43 a.m. this day. The Vice-Chairman, Mr. Ouellet, presided.

Members present: Messrs. Blair, Brewin, Brown, Cantin, Chappell, Gilbert, Hogarth, MacEwan, MacGuigan, Marceau, McCleave, McQuaid, Ouellet, Schumacher, Valade (15).

In attendance: The Honourable George J. McIlraith, Solicitor General of Canada; Mr. J. Hollies, Acting Deputy Solicitor General. *From the Royal Canadian Mounted Police:* Commissioner M. F. A. Lindsay; Messrs. W. H. Kelly, Deputy Commissioner (Operations); W. J. Fitzsimmons, Deputy Commissioner (Administration); B. Lynch, Financial Officer.

The Committee resumed consideration of Item 15 listed in the Revised Main Estimates for 1968-69, relating to the Royal Canadian Mounted Police.

At the opening of the meeting, Commissioner Lindsay made a statement regarding the bilingualism program in the R.C.M.P.

Commissioner Lindsay was then questioned. Deputy Commissioner Kelly and Mr. B. Lynch also answered questions.

At the suggestion of Commissioner Lindsay, an article headed "MARIHUANA—A Calling Card to Narcotic Addiction", by Henry L. Giordano, Associate Director, Bureau of Narcotics and Dangerous Drugs, Washington, D.C. was distributed to each member of the Committee.

Deputy Commissioner Kelly extended an invitation to members of the Committee to view two films on the subject of marihuana, through the offices of the R.C.M.P. The members expressed their interest in the matter and the Chairman indicated that arrangements would be made for the two films to be shown at the next meeting of the Committee.

In response to a request made by Mr. MacGuigan, Commissioner Lindsay undertook to supply members of the Committee with the curriculum of R.C.M.P. training programs.

Item 15 was carried.

At 12.23 p.m., the Committee adjourned to the call of the Chair.

Fernand Despatie,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Thursday, November 7, 1968

● 0944

The Vice-Chairman: Now that we have a quorum we will open the meeting. We will resume consideration of Item 15 in the Revised Estimates for 1968-69 relating to the Royal Canadian Mounted Police. Commissioner Lindsay is again our witness this morning and I believe he would like to open the discussion this morning by making a short statement.

● 0945

Mr. MacGuigan: Mr. Chairman, I have a question of privilege that I would like to raise first with respect to the publication of the proceedings. Up to this point we only have copies of the proceedings of meetings Nos. 1 and 2. I had to miss part of last week's meeting because I was attending a meeting of another committee, and at this point it is impossible for me to know what the Commissioner said last week. I think it is very unfortunate that the facilities of the House are not sufficient to enable us to have the minutes of one meeting before the next meeting begins, and I hope this Committee, will express its concern over this matter to the appropriate authorities.

The Vice-Chairman: Your point is well taken, Mr. MacGuigan. I understand that the staff of the Committee Reporting Services is overloaded with the work of the various committees, and the Clerk has just informed me that No. 3 will be published within two days.

Mr. MacGuigan: Two days from now. But that is a week since the last meeting.

The Vice-Chairman: I know. Commissioner Lindsay?

Commissioner M. F. A. Lindsay (Royal Canadian Mounted Police): Thank you, Mr. Chairman. I welcome the opportunity to elaborate on an answer that I gave on October 31 respecting our bilingualism program.

In the first place, I feel I did not give enough stress to the fact that we are willing at any time to take any number of qualified bilingual recruits, particularly French-speaking recruits, into our force. I pointed out pre-

viously that we check every month to make sure that our intake of bilingual recruits is at least 10 per cent. If it falls below that figure we embark on further advertising, we send our men into the schools, and this sort of thing.

There are actually three items I want to raise concerning this. Since 1964, when language training began in the public service, some 80 members of our force participated in that program up to July of this year. A recent survey of the National Capital Area has revealed that we have an immediate requirement for training of some 62 non-commissioned officers, constables, in the French language. The names of these people have been submitted to the Language Training Bureau and at the present time we are awaiting further word on this. Two of our officers have qualified themselves in French and their names have been submitted to take the total immersion course, and we hope that at least one of these officers will be accepted.

We have also embarked on another new program in this area. After discussion with the Director-General of the Language Training Bureau, a group of some 48 graduates from our Red Deer Training Division, at Penhold, Alberta, were tested in the French language and the Language Bureau of the public service informed us that they will be able to take 12 of these recruits on a two to three-month partial immersion French course beginning on January 27, 1969. This course will be given at their school in Hull. The object of the program is to develop bilingualism, in French and English, among more of our members so that in time the force will be able to serve French-speaking Canadians in their own language no matter where they reside. Under this program French will first be taught to English-speaking recruits and courses in English will also later be given to French-speaking recruits. At the present time we allow these tests to be given and the examinations written in either language. When it is found that some of our prospective recruits are not proficient in the English language, we hope to be able to give them training in the English language. So we are mov-

ing forward in this field and, I may say, without any increase in establishment. This simply means we spread our forces thinner while these fellows are undergoing this additional training. Thank you, Mr. Chairman.

The Chairman: Are there any questions?

Mr. MacGuigan: I have some questions, However, they do not arise out of this statement. Perhaps someone else wants to pursue this point.

• 0950

[Interpretation]

The Chairman: Mr. Marceau.

Mr. Gilles Marceau: Mr. Commissioner, have you so far rejected any applicant who wanted to join the Mounted Police because he spoke only French?

[English]

Commissioner Lindsay: I am not aware of any instances of this. However, this could have happened. They could have been advised that they should attempt to become proficient. Our training divisions for recruits are both in Western Canada at the present time and we have bilingual counsellors there to counsel and assist them. I have no knowledge of this having occurred, although I cannot say that it has not occurred.

Mr. Marceau: That is fine.

The Vice-Chairman: Mr. MacGuigan?

Mr. MacGuigan: Further to my earlier remarks, Commissioner, if I ask you about something that you previously answered I apologize in advance.

How adequate do you consider our crime statistics in Canada are at the present time?

Commissioner Lindsay: As a matter of fact, I think the Minister has already spoken on this topic.

Mr. MacGuigan: Yes.

Commissioner Lindsay: As he mentioned, we have better procedures for reporting crime and more cross-Canada crime is being reported to us by smaller police forces. We did have trouble in this area for a number of years but we are now getting them to report offences and also to send fingerprints in to the National Fingerprint Bureau. On the matter of the adequacy of reporting, we are investigating this at the present time and this

touches on a partial answer that I believe I gave the first day that some of our statistics undoubtedly are in areas of theft under \$50 and they are skyrocketing, they are showing a great increase. On a tour of the Maritimes recently I discovered from our registry people who keep these statistics that many petty offences are now being reported which were never reported before.

I think I previously mentioned the matter of the loss of hubcaps. If you have a comprehensive policy with an insurance company you can collect for, let us say, a broken windshield or a loss of hubcaps. Children could have knocked them off or, of course, they could have fallen off or it could have been the accidental breaking of a windshield. They are now reported as a theft under \$50 or willful damage to property. There is no hope, of course, of ever getting to the bottom of these things. If they did, of course, they would probably find that it was done by children and there would be no prosecution. There are quite a few of these cases being reported and we are trying to find out just exactly what the proportion is. I suppose they are crimes and we are now listing them as offences and this does tend to create the statistics.

Mr. MacGuigan: Several years ago the Director of the Institute of Criminology at the University of Toronto in a public statement said, in effect, that crime does pay. I think he said that fewer than 50 per cent of the criminals are actually apprehended. He was not talking about conviction, he was just talking about the police laying the charge. I do not recall whether or not these were all indictable offences or what category he was speaking about. Do you have any comment to make on that?

• 0955

Commissioner Lindsay: Dr. Edwards is a personal friend of mine and I remember the occasion. This feature bothers us very much indeed. It is not only that a larger number of offences are being committed but the fact that from a percentage standpoint the incidence of our being able to reach a satisfactory conclusion has been dropping steadily. I am now speaking primarily about our own force; otherwise it varies across Canada. This has been going on since 1962, to be precise, and it is something that we are very greatly concerned about. When we first analysed these statistics I called a conference of our commanding officers from all across Canada in January of this year and put this right on the

table, and since then they have done a lot of analysing to ascertain just what the situation is. We discovered this very interesting fact, that in our divisions where this situation is occurring the workload has gone beyond their capacity. In the case of breakings, enterings and thefts, in Western Canada particularly our men are heavily loaded with examples of where the incidence of satisfactory conclusions being reached in cases is steadily dropping. This has not reached alarming proportions but it is something with which we have to deal. We have changed our training recently to make provision for this. We now have more training for what we might call detectives. This is one of the measures we have taken. Another measure is to keep our subdivisions informed of these statistics, and as the thing slips we re-deploy men and try to make sure that this does not slip any more. It is alarming that the offences have been rising and the percentage of satisfactory solutions has been dropping off, and this is something we cannot live with indefinitely.

Mr. MacGuigan: Turning to your educational program, I think we all applaud the fact that your force is so progressive in allowing its members to gain further education. In your training course to what extent do you focus on what might be called the rights of the subject or the civil liberties of people as a kind of counterbalance to the inculcation of police methods.

Commissioner Lindsay: We have always had what they used to call—and they have written poems about it—the little red manual. This is the constable's manual and it is, of course, the recruit's bible in connection with his powers and duties; the rights of the citizen and the rights of the policeman. We have very good instructors and we now have very good techniques for training our instructors. We are also training instructors for outsiders. This is one of the areas that they stress, but this constable's manual is drilled right into our men as to their rights and the rights of the public. If any constable ever says that he has not received any instruction on that we immediately inquire where he was when these classes were on.

Mr. MacGuigan: How long is your training program? Is it several years?

Commissioner Lindsay: The procedure at present is that they spend three months in basic training at Regina and then they proceed to Mynarski Park at Red Deer, Alberta,

for a further three months of formal training—it is the second three months that I have just been describing—and they are then transferred to divisions. The reason we like to have single men for two years is because they are transferred from place to place, and they are under selected NCOs who are very cognizant of the constable's manual and the rights of the citizen. They are subject to this kind of training for one year. They are given booklets. They fill out questionnaires. We have a training NCO in each division who checks on what they are studying, what books they are reading, what statutes they are learning and what court experience they are getting. So, there really is a year and a half of this type of training.

Mr. MacGuigan: Yes. I would like to turn briefly to one other area, and that is the policing duties which you take on by contract with the provinces. I have read that one of the reasons the provinces like this arrangement is because it is the cheapest form of policing that they can get. Is the federal government being remunerated by the provinces to the full extent of the cost of servicing and of training the policemen who might be involved in these activities?

Commissioner Lindsay: There was a formula worked out at the Federal-Provincial Conference in 1964, which was presided over by the late hon. Guy Favreau, and the federal government raised the cost in the following manner so, that the provincial budgets would not be struck too seriously. Each year for 10 years the federal government was paid 40 per cent of the per capita cost of each member assigned to them and the agreement was that it would go up 1 per cent per year for 10 years until they paid 50 per cent of the per capita cost.

• 1000

We have many men doing municipal police work. The formula there is much the same. They pay the first five men on this same basis but over five men they pay 75 per cent of the cost and, considering the number of young men we have on municipal work, in actual practice in these large municipalities they are in effect paying the full cost.

Mr. MacGuigan: So the provinces are in effect being subsidized in part.

Commissioner Lindsay: Commonly, but it is not a misconception because it is partly right. But when we have our work, that is our work

on three levels, by the same men who start out in the morning with a federal file, say income tax, in their brief case, a provincial matter, that is, checking on burglars and also a final concern in the municipalities—the same burglars maybe—there are grey areas involved here with benefit to both. There are great benefits to us in this because there is a clause in each one of the contracts to the effect that in any emergency we may withdraw any number of these men within reason to meet that national emergency. So in effect we have about—I am speaking now off the top of my head—5,200 men on whom we can draw in this manner. I will give you two illustrations. At Expo last year we needed additional men and we needed them urgently. We withdrew 80 trained men from our contracts and put them in barracks on St. Catherine street in Montreal for duty at Expo. In this very budget, the estimates that we are discussing, there are 60 included in there for security fraud purposes. This is investigating bankruptcy and fraudulent company operations, and so on. They have been on the job—and we are just doing these estimates now—they have been on the job almost since that committee sat on security frauds about a year and a half ago, in 1967. We were able to withdraw 60 fully trained men, and these are of high calibre. You can appreciate the type of work they are going to have to do. We could withdraw them from our contracts—replace them eventually with recruits—replace them up the line—and the federal government meeting its responsibilities received the benefit of this. We do not have them approved in our estimates yet; they are here in this budget. They have been on the job, for the most part pulled out of the provinces and municipalities and fully operative. So you see, there is a big grey area in this type of operation, for both governments receive advantages.

Mr. MacGuigan: Yes. I will allow some of the other members at this point to ask other questions.

Mr. Valade: Would you mind repeating what amount was provided in the current estimates for that service?

[Interpretation]

The Chairman: Mr. Valade, would you please repeat that question into the microphone.

[English]

Mr. Valade: I was asking what was the amount in the estimates in relation to what the gentleman has just said.

Commissioner Lindsay: Sixty fraud squad people—about \$700,000. Sixty taking the full per capita. This is based on the equipment, their cars, their mileage, everything—about \$12,000 to put a man fully operative in the field. So you would multiply 12 by 60. They are spread in all the cities across Canada where there are stock exchanges.

• 1005

Mr. Valade: Can I ask one other question?

The Vice-Chairman: Is it on the same subject?

Mr. Valade: Yes, it is related to that. When you talk about \$12,000, for what period of time does that cover?

Commissioner Lindsay: Twelve months. And this is everything. It includes the cost of the training, transportation, uniforms, everything.

Mr. Valade: Just one final question. This, of course, corresponds to 60 per cent of the cost, the other 40 per cent being provided by provincial or municipal according to...

Commissioner Lindsay: No. If you will recall, the Prime Minister of the day set up this commission to inquire into the deteriorating situation with regard to the state of some of our corporations. The point was that we wanted to keep our standing—this is my understanding—in connection with the Securities Exchange Commission in the United States and, of course, access to the New York money market. The federal government wished to tidy up this situation, so we came up with two recommendations. First, we would establish in our headquarters at federal government expense—this was put up by the committee to a Federal-Provincial meeting—a repository of all the names of fraudulent bond salesmen, doubtful corporations, all this sort of thing, a special repository or a list of all the names. Secondly, we would set up these fraud squads to assist the provinces where we do not have contracts, that is Ontario and Quebec, and carry out these duties by way of assistance to the city police forces in other cities where there are Canadian stock markets. The government at that time agreed to these two items with instruc-

tions that we should implement them and, of course, we did implement them.

The Vice-Chairman: Mr. McQuaid.

Mr. McQuaid: Mr. Chairman, my first question to the Commissioner concerns what has always appeared to me as being a tremendous loss of manpower when the policy is, as it apparently is, particularly in the smaller detachments, of having trained personnel doing what I call stenographic work; typing out information, summonses, warrants, page after page of reports that apparently have to be presented to main offices. Do you not think that the taxpayers' money could be saved if this work were directed to secretaries, to stenographers, to help which is not quite as expensive and not as highly trained as your RCMP? Even constables, I believe, start off at around \$5,700 or \$5,800 a year. No, \$7,700 a year.

Commissioner Lindsay: No, it is \$5,200 actually, but when they are out in the field doing the work you are mentioning, it is in that area.

Mr. McQuaid: Yes, but here are highly trained men sitting in offices many, many hours of the day at typewriters doing work which, I think, could be done by girls, for example.

Commissioner Lindsay: Well, here is the program that we instituted some time ago. In any detachment with over seven men I believe now, it was 10 for a while, we do authorize a Public Service stenographer. This is what we have been doing. In our municipal contracts we put this very proposition up to the municipality and request them to provide stenographic services, and almost invariably they do. So that where we have seven to 10 men, in nearly every instance we have a stenographer. Otherwise these men type these reports overtime. This is what is happening in effect and, of course, you know there is no overtime pay in our organization. We have another program, and that is the purchase of tape recorders to tape the reports in the busier detachments and then hand over the tapes to stenographers to type. This is how we are trying to cut back in that.

Mr. McQuaid: And are you instituting that in your smaller detachments as well? What do you think about extending this program to detachments below seven men?

Commissioner Lindsay: I do not think it would be efficient. We have a program of taping reports and sending them to a central detachment where there is a stenographer, if they are lengthy reports, and the stenographer there would type out the material and send it back. This is in the experimental stage.

Mr. McQuaid: But my point is, Commissioner, that you have to keep men in your small detachments of seven men and under at all times to answer the telephone, to do all this work which I think could be much more economically done by a less highly paid stenographer.

• 1010

Commissioner Lindsay: In the smaller detachments we have, let us say, three men. We would have a night man there. He would not be fully employed, but we do want a policeman there. Of course, there are some of the fellows who have been murdered. When they get a call they strap on their sidearms, jump in the car and go out and answer a complaint. These calls only come rarely, sporadically and, of course, while he is sitting there answering the telephone he can be typing these reports and also filing all the detachment identification cards. We try to do this as economically as possible.

It is estimated that if we did employ a stenographer on one of these small detachments she would not be employed more than 20 per cent of the time. Of course, in some of the small towns it would be a little difficult to obtain the qualified stenographers, but we do not think she would be employed fully.

Mr. McQuaid: Moving on to another area Commissioner, what is your reaction to the practice which is particularly prevalent in smaller areas in police courts where a member of your detachment prosecutes cases? I read just the other day in the paper a report of a case in which the chief witness was a member of the RCMP and he was also the prosecutor.

Commissioner Lindsay: We have got a law on that, *Rex vs. Bell, Moose Jaw, Saskatchewan*. This is a matter, of course, for the Attorney General of the province. Actually I was assigned to court prosecutor in the province of Saskatchewan for at least two years and there is law on that.

Mr. McQuaid: Do you look with favour on that practice?

Commissioner Lindsay: We are dependent on the advice, of course, and request, let us say, rather than instructions of the Attorney General of each individual province and in some provinces this is desired. Over the years there have been many complaints from law societies concerning this but, as I say, if we are asked to do it we do it; I would not comment on the efficacy of it.

Mr. McQuaid: You do not exercise any control over that, then?

Commissioner Lindsay: No, it is the Attorney General of the province.

Mr. McQuaid: There is another matter I would like to raise with you, Commissioner, and get your opinion on and it is this matter of custody after arrest. It always seemed to me that in many cases a person finds himself confined to jail after his arrest, perhaps for some comparatively minor offence, and he is put to the inconvenience then of arranging bail and often this arrangement cannot be made on the spur of the moment.

Now, in many of these cases I think that the man who is confined is in all probability really a responsible person. He has been picked up on some minor offence. For example, I might be in a club tonight and just have one drink too many and on my way home I am picked up and charged with driving while impaired. The practice is, of course that I am arrested, and I am not only arrested but I am put in jail and I am left in jail until I can arrange bail.

• 1015

It seems to me at least that a great many of these people who are so confined are, as I say, responsible persons who would appear next day for their trial in any case, and I am just wondering what your thoughts are as a policeman with reference to a proposal that could be made in cases of this kind, when the person is apparently a responsible person, that he be immediately released and just served with a summons to appear in court the next day.

This would save him the embarrassment, first of all, of being confined and it would also save him the trouble of trying to arrange bail. I realize, of course, that this is not entirely a police problem. I am not quite sure of this, but I think the Code does provide that the man has to be confined. I would like to get your opinion on it in the event that this Committee might like to make some recom-

mendations with respect to the changing of the Criminal Code in this respect.

Commissioner Lindsay: We have voluminous instructions, of course. In each division where we do the criminal policing we act under the guidance of the Department of the Attorney General and each division has the specific instructions of that particular department in which it is working.

We give our men a great deal of training on this and our NCO's are very cautious in advising our people to use discretion. This is a matter, of course, of discretion and at two o'clock in the morning our people who make arrests sometimes perhaps go what might be considered the wrong way, but where they are responsible citizens they are summoned.

Of course, many who are highly intoxicated think they should be released immediately, but there is a difference of opinion involved there for their own protection. They are kept, of course, until they are in a condition to go home.

In one of our provinces we have instructions at the present time that where, let us say, the habitual drunks are arrested they are not even charged in most instances; we only keep them long enough to make sure that they are sober and then send them home; so we are moving. Sometimes there are complaints about this, I am told, because just do not give them time to sober up sometimes. They come home too soon and there are all sort of problem.

The Vice-Chairman: Mr. McCleave?

Mr. McCleave: Mr. Chairman, I have two areas of questioning. First, to the Commissioner, how long has the practice been in effect of policing the airports of Canada and are the police in all airports?

Commissioner Lindsay: Not in all airports. They are in all of the international airports in Canada; I am told, seven. We have been in and out of these. My recollection is that we got into them first about 1956 or 1957 in a rather limited fashion. We were in there for two years and we ourselves, of course, suggested that perhaps this was not the type of duty for us and we got out, but the airport managers had such violent arguments and trouble that within a few months the pressure was on and at the request of the Department of Transport and on contract with the Department of Transport our men moved back in, first as supervisors of Commissionaires and some of the trouble continued.

I could tell you some interesting stories of what happened in Malton and in Dorval, but then it became necessary for us to move more men in there to do the actual policing. There have been many complaints by the airport managers and I must say, rather advisedly, that in the recent two or three years the complaints have been at the minimum.

• 1020

Mr. McCleave: Have you, then, and the force changed your minds as to be desirability of being there? I gather you were not very happy about being put there in the first place, but has the need proven itself now, Commissioner, for you to be there?

Commissioner Lindsay: All I can say is that the airport managers seem certainly to be very pleased that we are there. Of course, actually the people who do a lot of the directing of the public and so on are Commissionaires, but they had so much trouble with people who hurriedly parked their cars, and so on, and then there were violent arguments later that our own regular members were put on there. On the airports, of course, we have got something else too, and that is crime intelligence.

Mr. McCleave: International drug traffic; is that part of the reason for the RCMP's being at the international airports?

Commissioner Lindsay: Not in the context in which you asked the first question. They are there, but that is something else again. That has to do with crime intelligence. This is a different type of man.

Mr. McCleave: And they have been continuously at these airports, I take it.

Commissioner Lindsay: Continuously since we found the need, and since we could base it, let us say, on economy. We have these people in Malton, Dorval, Vancouver, and not full time at Edmonton, Winnipeg and Halifax.

Mr. McCleave: My second area of questioning, Mr. Chairman, if there should not be any supplementaries arising out of what I have asked, deals with metropolitan development, and I refer specifically to the Halifax situation, but I think it perhaps has general interest in other metropolitan areas where the Mounted Police is situated. Your location in Halifax is on the harbour side, and yet, as you know, Commissioner, there is not only the bulk of the city between your headquarters and where you do most of your work, but

that city is expanding and you will be still further from the scene of your traffic operations and the like.

I understand that the traffic patrol, for example, will be moved out of the city and into the area where it does its work. This is commendable in the name of efficiency, but I wondered if there were other aspects, too, that would make you consider moving your headquarters into the fringe of the city of Halifax, so that you will be closer to the areas where the Mounted Police do their work.

Commissioner Lindsay: We would move to any suitable location; we had the necessary funds in these particular estimates for the construction of a new headquarters in Halifax, and of course that went out with the \$13,800 million that was struck off.

There is another reason, of course, for our being in the city of Halifax; that is that we perform many preventive service duties, that is customs, excise, income tax.

Mr. McCleave: Yes, I had forgotten the waterfront part of the operations, but these are very essential.

Commissioner Lindsay: Yes, that is right, sir.

Mr. McCleave: Therefore the development you mentioned is a postponement because of austerity or budget problems over which you have no control.

Commissioner Lindsay: This is true.

Mr. McCleave: Thank you.

Mr. Gilbert: Mr. Chairman, in view of the statement the Commissioner has made with regard to recruiting problems, especially in obtaining bilingual recruits; in view of the enforcement of law being a provincial matter; and in view of the Prime Minister's stating that the federal government is getting out of these joint federal-provincial sharing programs, I am just wondering if the RCMP is considering phasing out its operations. Is it not becoming a bit of an anachronism, Mr. Commissioner?

Commissioner Lindsay: That is a matter of government policy. I have no answer on that.

Mr. Gilbert: I see.

Commissioner Lindsay: I may be able to answer you in this respect; the provinces have 10-year contracts with the federal gov-

ernment. Two and one-half or three years have run now on these contracts.

Mr. Gilbert: One of the members indicated that there may be a subsidizing aspect here, the federal government subsidizing the law enforcement in particular provinces. When I think of Ontario the only feature that the RCMP have is in the drug field, and income tax, excise tax and now the fraud squad. Why cannot the province, if it has the jurisdiction of law enforcement, take over these fields and do a job?

• 1025

The only part that I see the RCMP playing a major role in is national security. These others have come up through a historical process; in the past the provinces were not strong enough financially so the federal government had the RCMP for the purpose of law enforcement. But surely we have reached the stage in Canada where the RCMP should be phased out, or at least reduced to the position of looking after problems of national security. What do you say about that?

Commissioner Lindsay: This again is getting into government policy. As I have already explained there are great grey areas involved here where there is benefit to both. We have costed this sort of thing and it has been estimated that we would require for federal duties across the country at least almost half of the staff that we have at the present time. Many of them would be located in areas for customs and excise preventive work and various other types of federal duty, as a national police service, of course, we would be relatively ineffectual. At the present time we have this flexibility; we have the contracts as a training ground for well-qualified people who can be quickly deployed on strictly federal duties. The rest of course is up to government policy.

Mr. Gilbert: We can probably ask the Solicitor General these questions when we get him back. With regard to the question of drugs, Mr. Commissioner, last week you were setting forth the number of convictions with regard to marijuana and so forth. I wonder if you would supply the Committee with a table showing the drug convictions on the hard drugs, and also the so-called soft drugs. I am more particularly interested in the problem of marijuana and LSD and the number of convictions that have been made in the last three years concerning the soft drugs, and the age group 16 to 21. These are some of the prob-

lems that the Committee should be informed of to determine the number of young people that have been convicted.

Commissioner Lindsay: Mr. Chairman, I have copies here of an article by Henry L. Giordano, Associate Director, Federal Bureau of Narcotics and Dangerous Drugs in the United States. This contains some material that might go some distance in answering the question. But first, before the statistics, I would like very much to elaborate on an answer that I gave last week on this topic.

I mentioned that of the people who are arrested by our force for offences in connection with hard narcotics, 70 per cent of them have informed our people that they started on marijuana. I mentioned the case of the young man in Montreal who died two or three weeks ago at 23 years of age. He had stated that his addiction had started with marijuana. Here is what the Federal Bureau of Narcotics says in that context:

• 1030

A recent review of this subject was made by a noted psychiatrist, who studied 80 English heroin addicts. He found that all 80 had first used marihuana and apparently considered its effects second only to those of heroin.

Further on it says:

In an intensive research project conducted by Dr. John Ball, chief sociologist of the United States Clinical Research Centre in Lexington, Ky., it was found that of 1,759 narcotic addicts examined, 80 per cent had used marihuana prior to their addiction.

That of course goes further than my statement that our people are aware that 70 per cent of the people who are in real trouble in connection with hard narcotics, had started on marijuana. That is why the police—and the police around the world—are very concerned about this topic. I say around the world, because I discovered at Interpol that the police in nearly every country, including Sweden, are very concerned, are becoming more and more concerned at the present time about this. They are starting with marijuana and they are going over to heroin.

Mr. Chairman, if I may, I will proceed with some of the statistics requested. I regret that I do not have them broken down by ages, but here are the totals.

For three years. Just to show you what is happening. In 1965-66, opiates, and that is mostly white heroin of course, 541 cases; marijuana, 162; LSD, nil.

Mr. Gilbert: LSD was not against the law at that time.

Commissioner Lindsay: No, it was not added to the Food and Drugs Act. Now, just a moment, here may be LSD, though. Food and Drugs Act, the same year, 38, amphetamines I am told. These are amphetamines, mostly, at that time. Food and Drugs Act, 38. Now in 1966-67, opiates 545; marijuana, 398; LSD, 10 cases: Food and Drugs Act, 22. In 1967-68, opiates, 567; marijuana, 1,678; LSD, 40; Food and Drugs Act, 36. Now, this is even worse. Six months this year, 1968-69, opiates, 272; marijuana, 1,064; and LSD, up to 45. So just to recap, I will run down the marijuana that you are interested in. Three years ago, marijuana, 162; 1966-67, 398; last year, 1,678; six months this year, 1,064.

Mr. Gilbert: Which indicates the seriousness of this marijuana problem.

Commissioner Lindsay: Yes it does, and it indicates that also our hard narcotic cases are going up.

• 1035

Mr. Hogarth: I would suggest that if there is a correlation between marijuana users and heroin, your heroin users should be increasing in proportion. You have in 1965-66, 541; next year, 545; next year, 567; next year projected, 544. Whereas the marijuana users are increasing tremendously, the opiates are staying pretty well on level, constant to the drug population, but the marijuana users should be making a contribution to the opium convictions.

Commissioner Lindsay: My answer to that is—take a look at that big jump in marijuana. We have not had time yet to get the full impact of this.

Mr. Hogarth: No, I appreciate that, but your convictions are following use to a large extent. That is to say, where you have 1,678 convictions, I think you can rest assured that the year before you had many more users than you anticipated. That is to say, the use takes place and then the convictions follow, and if there is a correlation between using marijuana and subsequently going to heroin, your heroin figures should be increasing in the same proportion.

Commissioner Lindsay: As you said, it follows, but it does not follow along directly. It may take a couple of years for this to show.

Mr. Hogarth: So your position is that, insofar as your statistics are concerned, there is no correlation but you anticipate one. Is that correct?

Commissioner Lindsay: That is right, and we find this from what is happening on the streets. The first pushers of marijuana were not pushing anything else.

Mr. Hogarth: Right.

Commissioner Lindsay: Now there is a higher incidence of arrests made where the pushers have marijuana in one pocket and heroin in the other, and they say, "if you cannot take a good enough trip on marijuana, I have something else in my other pocket". This has happened.

Mr. Hogarth: Yes, but that is because of the illicit method by which drugs are merchandised. That does not lead anybody to believe that if you use marijuana for a given period of time you will eventually get a craving for heroin, because as I understand the Senate Crime Commission in the United States, they said there was no such correlation. Your suggestion is that the illicit traffic is moving into both fields and offering one or the other, and young people who have tried one are prepared to try another.

Commissioner Lindsay: Well, this is correct. Yes, this is substantially correct. But the experts in the United States say there is an association. Perhaps it is the same—that the whole matter is psychiatric, that perhaps the type of people who would go to marijuana would also, for a greater kick later on, go over to heroin. But there is—we know it as police—an association, and this is what bothers us because we are trying to get on top of this.

Mr. Hogarth: Fine.

The Chairman: Could we return to Mr. Gilbert's questioning and then I will recognize you Mr. Hogarth?

Mr. Gilbert: Thank you Mr. Chairman.

Mr. MacGuigan: I also have a supplementary question.

Mr. Gilbert: Mr. Chairman, I had the floor.

The Chairman: I believe Mr. Gilbert had the floor on that subject. I will recognize him

now and then I will entertain any supplementary questions on the subject.

Mr. Gilbert: Mr. Commissioner, would it be fair to say that 80 per cent of these marijuana convictions apply to persons between the ages of 16 and 25?

Commissioner Lindsay: I think that is a correct assumption. They are young people.

Mr. Gilbert: And is the policy of your Department to recommend to Crown counsel that these persons with convictions be given terms of imprisonment rather than fines?

Commissioner Lindsay: No, it is not our policy.

Mr. Gilbert: There has not been any directive from the RCMP to Crown counsel?

Commissioner Lindsay: No. No directive whatever. It is strictly up to the court.

Mr. Hogarth: There is a directive from the Court of Appeal in British Columbia to that effect.

Commissioner Lindsay: But this is outside our purview.

Mr. Gilbert: I was under the impression that there is a directive coming from the RCMP to the Crown counsel, but you say that is not so.

Commissioner Lindsay: No, but I would not guarantee that our people in drug squads, who see the horrors of what happens to some of these drug addicts, would not suggest it to the courts on their own, but there is no directive. It is strictly up to the courts. And I emphasize it is not policy. We do not direct the courts.

Mr. Gilbert: That is all I have at the moment, Mr. Commissioner.

The Chairman: Mr. Hogarth, do you have other questions in the same line?

Mr. Hogarth: With regard to marijuana, yes. Are you satisfied with the co-operation you are getting on the Interpol level, or directly with the United States authorities, with regard to the control of marijuana trafficking?

Commissioner Lindsay: Yes.

Mr. Hogarth: Are you satisfied with the co-operation you are getting with respect to the Mexican authorities?

• 1040

Commissioner Lindsay: I can answer that very well, because I have made two approaches myself to the two heads, the Director-General of the Mexican Police Force and his deputy who I know personally and with whom I am in correspondence. Recently I saw a film on the prodding of the Federal Bureau of Narcotics in the United States and our own. They have now borrowed helicopters. They are flying all over the place, landing on poppy fields and on marijuana patches and destroying them by hand, burning them.

I have an understanding with the Mexican police that if they have any suspicion that any person there is likely to come up the West Coast, we will be advised. This is the sort of co-operation that we have. I have had them up to our West Coast. Our narcotics squad took them in tow for two or three days, and showed them our problems, namely that we shut off white heroin that comes from the south of France and then the vacuum is filled by brown heroin from Mexico. We are getting better co-operation and I think some better control on this. They are very concerned themselves.

Mr. Hogarth: Now, in your opinion, is the illicit distribution of heroin controlled by one, two, three or any organized syndicate on an international and national level?

Commissioner Lindsay: No, not one or two or three. I had an opportunity to question at a full session of the plenary session of Interpol, the heads of the French police force and I asked them if they were aware of the number of plants—now these could be small plants consisting of three dishpans where they refine the juice of the opium poppy to 99 per cent pure white heroin—and they admitted that they have knocked off two or three of them recently but as far as we can find out, and I was in this area recently, that the poppy is grown in Turkey, much to the annoyance of Iran, who have pretty well eradicated it and are attempting, at the instigation of Interpol and the United Nations Commission on Narcotic Drugs, seriously to eradicate it and much to their annoyance they have discovered that their market, let us say, was being taken over by Turkey. Now, the Turks have assured us that they are adopting the same program to shut that off. Lebanon had a problem and they have taken very stringent measures in Lebanon recently, mostly at the instigation of the United

Nations Commission on Narcotic Drugs. So gradually we hope that we will get this shut off.

Mr. Hogarth: Is it your suggestion that these syndicates or agencies which are rigged to distribute heroin illicitly in North America are now moving into the marijuana field? Have you any information to that effect?

Commissioner Lindsay: No, not yet. There is no indication of that; there is not the same kind of money. Of course, we are finding that the peddlers. . .

Mr. Hogarth: These are pushers on the local levels?

Commissioner Lindsay: Pushers on the local levels do try to tap a source of heroin and they use that, of course, as a supplement and if they can push that to some unfortunate marijuana user as an extra kick, well we have got more narcotic addicts on our hands and this is where the association lies.

Mr. Hogarth: I have no further questions, sir.

The Chairman: Mr. MacGuigan on the same subject.

Mr. MacGuigan: Mr. Chairman, I do not find it very helpful to have the estimate that 75 to 80 per cent of narcotics users have begun by using marijuana. This seems to me is on the same plane as saying that most alcoholics have begun as social drinkers. The helpful statistics, helpful correlation, would be the number of marijuana users who go on to use stronger drugs and from what I have seen, the correlation is very small.

I wonder if the Commissioner would have any statistics on the number of marijuana users who end up as narcotics problems?

Commissioner Lindsay: Those are my statistics at the last session that we were told by our drug squads that 70 per cent of the arrests they make are addicts who are hooked on hard narcotics advised them that they started on marijuana. I quoted English statistics that 80, all 80, had told the police there that they started on marijuana and in the United States, out of 1,759 that 80 per cent said they had started on marijuana.

• 1045

Mr. MacGuigan: This is taking the thing from the wrong way around. What I am interested in is not the number of narcotics

addicts who have begun with marijuana but the number of people on marijuana who go on into heroin. This is the significant figure, it seems to me, and I suggest that it is probably a very small correlation. It may be that 5 per cent or 2 per cent of those who use marijuana go on to use heroin.

Commissioner Lindsay: We have not any accurate statistics on that.

Mr. Hogarth: May I just clarify one point, Mr. Chairman? I know I have had a great deal of time but it is your suggestion that your drug squad has informed you that 70 per cent of the existing heroin addicts were started on marijuana?

Commissioner Lindsay: This is what we have been told. I cannot check that out case by case. . .

Mr. Hogarth: Of course not.

Commissioner Lindsay: The estimate is 70 per cent.

Mr. Hogarth: In British Columbia it is estimated that there are approximately 2,500 heroin addicts. Is that a fairly accurate figure?

Commissioner Lindsay: That is pretty close. I say so in the context of the number known in Canada.

Mr. Hogarth: It is my understanding that 2,500 has been reasonably constant for a number of years.

Commissioner Lindsay: Yes, that is true. We try by enforcement to keep the number down.

Mr. Hogarth: Any of the hard addicts that I have ever met have never even mentioned that they have even smoked a stick of pot and it worries me, because on your estimate it means 1,750 of those hard addicts that are pretty well constantly living in British Columbia have been started on marijuana, and yet we have had no marijuana convictions prior to 1965.

Commissioner Lindsay: Well, now, just a minute. You have got an old well-established cadre of narcotics users in British Columbia. They are old-timers. They are our thieves. That is why we have nine breakings and enterings every night investigated by our Identification Branch in New Westminster. They have got to feed the habit and these old-timers, of course, started before marijuana

na was on the market in the hands of high-school children. I am talking of the younger ones. I cannot isolate this . . .

Mr. Hogarth: Fine. Your suggestion is that a...

Commissioner Lindsay: It is the young people that are being picked up our men.

Mr. Hogarth: Then, just to clarify your position, your suggestion is that your drug squad informs you that 70 per cent of the new heroin addicts have started on marijuana?

Commissioner Lindsay: That is right.

The Vice-Chairman: Mr. Chappell, are you on the same subject?

Mr. Chappell: Yes. I am sure all of us are amazed to hear the figures of how many people started with marijuana. I am wondering if there is any research on this point? Is marijuana used, or has its role been to create a taste, for the heavier drugs or has it been used on young students to break down the social training against the use of drugs and, having started on marijuana, they are bold enough to try some of these others. In other words, is it dangerous in itself to create the taste or only break down the social training?

Commissioner Lindsay: There is no scientific evidence although there are researches in progress now to determine how harmful marijuana is and whether it is addictive or not, but I would suggest that our experience is that the second that you mentioned that it breaks down the impediment to going on to more and more and more, that is marijuana, heroin and perhaps LSD. In other words, I could say this is partly psychiatric.

Mr. Chappell: It destroys what our parents and society generally told us not to do and, having started with marijuana, we are bolder and try something else.

Commissioner Lindsay: That is right. And some of them get these hallucinatory trips or kicks from smoking marijuana. Then they are advised that the vendor has something that will give them an additional experience.

Mr. Chappell: Then it has some harm in itself. If it can give you a kick it could create a desire for a repeat.

Commissioner Lindsay: We think so, yes, depending on the dosage.

The Vice-Chairman: Mr. MacEwan?

Mr. MacEwan: On a different subject, Mr. Chairman.

Mr. Valade: I am on the same subject. I have a supplementary.

The Vice-Chairman: All right; Mr. Valade?

Mr. Valade: I just want to ask the Commissioner whether his Department has required or asked the Department of National Health and Welfare to study the effect and the social problems involved and the medical problems involved? Certainly your Department is not doing that; it has been working in collaboration with other departments. What have you been doing in this regard?

• 1050

Commissioner Lindsay: I will introduce you to Deputy Commissioner Kelly, our Deputy Commissioner of Police Operations. He has been in conferences with the hon. the Minister of the Department of National Health and Welfare.

Mr. W. H. Kelly (Deputy Commissioner (Operations), Royal Canadian Mounted Police): Mr. Chairman, we as a police force, of course, are concerned mainly with the enforcement of the law. But we are certainly drawn into the area of the sociological and psychiatric problems arising out of the use of drugs. I might say that we are not entirely happy to be in this position because we think that these answers should come from the experts and we are really not the experts. We are the experts on enforcement but not in these other areas. We, like yourselves, are anxious for as much research into this problem as possible. We do not think that too much research can be done. In order to be somewhat knowledgeable, we ourselves have studied the rulings that have been given in court cases. One of the biggest cases that has been through the courts on this problem, if you are interested, is a case in Massachusetts in which there were actually 17 experts—nine experts for the defence and eight experts for the state. It was ruled by a very prominent appeal court judge in Massachusetts that marijuana was a dangerous drug. Even the defence experts did not deny that fact. So with that and with all the other information that we can gather I think it is safe to say that the RCMP as a body feels that marijuana is a dangerous drug—small “d”. We think that research will show that the weight of scien-

tific opinion will without a doubt show that marijuana is dangerous in the form that we find it mainly—just the ordinary ground up grass or whatever they call it. Then we find that it is not sufficiently satisfying for a person to continue with the grass the so-called raw marijuana, and then they proceed to probably better quality—speaking as to the chemical content that creates the damage, and from that they then proceed to hashish which contains in a more concentrated form the real damaging chemical. It depends on the dosage and the frequency of dosage as to the damage that is done to the individual and you know as well as I that two individuals, being different, could take the same quality and the same quantity of this drug and the effects could be quite different. One could leave it alone, the other would be urged by this psychological addiction to proceed to something much stronger or a dose more often in this very field.

So really that is about the position that we find ourselves in. Coming right to the main part of your question, we have asked the Department of National Health and Welfare to do all possible to go into this question. I know that Mr. Curran of Health and Welfare, the legal man there and also I think the expert on this subject, has been to the Middle East very recently in an effort to get more and deeper information on the subject of marijuana and its effect on the individual.

Mr. Valade: Thank you for that answer, sir, which has helped us to understand. I am just wondering to what extent the Health and Welfare people have been asked to go into the psychological, psychiatric, social and human problems connected with the use of this drug. Has a committee been set up to study the full implication of its use?

• 1055

Mr. Kelly: I cannot say that we have asked specifically for Health and Welfare to go into every item but we have certainly indicated to Health and Welfare that from our point of view we would like the broadest possible research into this question.

Mr. Valade: The purport of the questions that some Members have asked would seem to indicate that consideration should be given to whether the use of the drug should be considered a criminal offence or a social problem and whether it should be cured by medical means or by paramedical assistance rather than rehabilitation assistance through our

court system. Unless there is an extensive study made in this regard I think that your Department will be forced to apply the law on a criminal basis.

Mr. Kelly: This is exactly our position but if I might give our views on the law at the moment I should say that purely from a police standpoint we think that any change in the law—in other words to downgrade the process of court procedure, to bring it down from an indictable offence to a summary conviction offence—would have a tendency to indicate to the people in this field that the government has come to the conclusion that the smoking of marijuana is a much lesser offence than we thought it was prior to this downgrading of the court process. Another thing to be quite frank about it—and this might clarify an earlier question—the RCMP is not concerned with the matter of punishment, we think that that is a matter for the community and the courts. But the thing that we do want—I realize the problem of a person having a criminal offence and this being carried on through the years, we are tremendously sympathetic to the young person with a conviction—is that the offence be still continued as an indictable offence so that we will be able to tell you when there is a subsequent offence. If the offence is brought down to the summary conviction level the police will not be allowed to take fingerprints, the subsequent offences will all be treated as first offences because we have no legal proof of an earlier offence, and we think that really what is needed is—and we are quite prepared for this—that the offence be an indictable one, chargeable on indictment or summary conviction at the wish of the Crown—not the police but the Crown—depending on the circumstances and then, whatever the punishment is, that is up to the court. But we would like it to remain an indictable offence in order for the police to retain a tool that we think is essential in the enforcement of the drug act.

We are against the offence being placed in the Food and Drug Act because we think that this would indicate to the public, as has been stated in one place, that we would be relegating this type of crime to the same category as an infraction of peddling dirty milk. We think that this would be very dangerous to the whole program because we are concerned about it. In the absence of this deep research in Canada but based on research in the United States where they are very concerned, and the fact that 65 police forces in the world

look upon this drug as a dangerous drug after considerable research—I think this has been in the Narcotic Act since 1923 so we are not talking about something new—we are of the opinion that until there are some very definite decisions based on established, recognized and acceptable research, that it would be dangerous to put marijuana without that knowledge in a much less serious class.

• 1100

Mr. Valade: As we all know, marijuana is being discussed at all levels—in the news media, on television, in governmental circles and so on. I personally deplore the way our national TV systems sometime popularize the use of marijuana.

Do you have any statistical indication that it has increased in such circumstances?

This is a supplementary question.

Mr. Kelly: We feel as you do about the advertisements that we see by way of TV and elsewhere.

You will have noticed that in yesterday's *Montreal Gazette* there was a statement about children being able to purchase hypodermic kits. I am not saying that that should not be publicized, but along with that statement there was a picture showing how to use a hypodermic. I suggest that that part of that news report was rather damaging. This is somewhat similar to what you are talking about.

I should mention, of course—and I should have done so earlier—that there is a tendency, and a strong tendency, among certain types of marijuana users to go into the broader fields of crime. We are finding that within the area in which we work.

Mr. Valade: Relative to that, has any effort been made, either by the RCMP or by any other government body, to try to reach some agreement with the information media such as TV and the press and government agencies on the setting up of a board by which a code could be established so that any news pertaining to these users and the pushers and their convictions, would not become a possible incentive in that field? I do not know whether or not I have made myself clear.

Mr. Kelly: Yes; very clear indeed; I certainly like the idea, but what you are asking for is something that would be very, very difficult indeed to attain. It is a desirable aim, if we could attain it.

Within the last two weeks we have taken up with the Department of Health and Wel-

fare the problem of education in the field of drugs, particularly in marijuana. We feel, of course, as law enforcement people that we should stay as much as possible out of the education field.

I know there are those who say that the RCMP has a tremendous effect when it makes a statement and that the Commissioner of the RCMP should make a statement on this and that, but we feel that education is somebody else's job, such as the Department of Health and Welfare.

The problems that we face in Canada today demand so much manpower on the actual enforcement of the law that, although we agree on the value of education, to take our men out of the field of enforcement and put them in the field of education is a very difficult decision for us to make.

We try to balance it, but we have told the Department of Health and Welfare that we think this is their job. They agree, and they have turned this educational process over to their consumer division. We are working with that division as closely as possible so that we can refer to them those who want information on the purchase of films.

There are some very good films, gentlemen, on marijuana. If you are interested, we have two that we would be very pleased to show you any time at your convenience. They are both films on marijuana and based on scientific conclusions. These are the kinds of films that we hope somebody will buy by the dozen and show throughout Canada under the sponsorship of the Department of Health and Welfare, the Kiwanis Club, the Rotary Club or any community organization at all. We would be very pleased if that were done, but we would like to show you the films. I think they are very educational.

• 1105

Mr. Valade: Thank you very much.

I would now like to ask a question of the Commissioner.

If I were to advertise in some form in the press the advantage, or disadvantage, of using marijuana, would that be covered under the Criminal Code? Could you prosecute people who did that? Could you do it under the Criminal Code?

Commissioner Lindsay: I do not think there is any criminal law that prevents advertising. We would certainly investigate it to find out what was behind it and what was the source.

Mr. Valade: I ask that as a basis for another question. We have national TV devoting one hour of broadcast time to a discussion of the advantages or disadvantages of marijuana. I feel that this is publicity, or propaganda. Can the RCMP investigate in such circumstances? Is it serving justice, or, I means, is it within the law?

Commissioner Lindsay: As you know, at the present time there is very great permissiveness in the country on comments and commentators. This applies not only in the field of marijuana but, of course, also in the very dangerous field of inciting to riot. The police are sometimes horrified at what actually is being fed to the country, and particularly to the young people. This, of course, is sensationalism and is what the audiences wish.

Mr. Valade: I am not speaking about sensationalism, Commissioner. I think it is a very important problem.

The police are doing their best to control the sources, the distribution, the users and the pushers on the one hand, and on the other they are being hindered in this way by national TV, or a crown corporation, which uses its facility to promote or to advertise marijuana. I think it is doing big disservice to the enforcement of the law, in this regard.

I may have put the question awkwardly, but is there is a law which forbids persons to advertise marijuana in a way that could be propaganda? Why should our CBC, our national TV service, and private stations, too, be allowed to use the air in that way? Has this been, as I think it should be, a concern of your department?

Commissioner Lindsay: Well, it causes us very great concern.

Mr. Valade: Have you ever complained about this to the authorities?

Commissioner Lindsay: No; because it is a matter of free discussion.

Mr. Valade: You have discussed it, have you not?

Commissioner Lindsay: Oh, we have brought it to attention, from time to time.

Mr. Valade: You have brought it to the attention...

Commissioner Lindsay: We mention it when some of these things are put on, of course. We bring them to the attention of our own department.

Mr. Valade: To the attention of the Minister of Justice, or to the attention of the authorities of the CBC or other...

Commissioner Lindsay: We do not purport to go directly to the CBC authorities, because this is a matter of free discussion in the country. As you know, there is a great deal of freedom of speech and we cannot purport to interfere with that. We do not believe in any respect of the police state, where we can shut off free discussion.

Mr. Valade: I do not want to prolong this. I just wanted to make the point, and I think it is important that we do it.

On this same subject, Mr. Chairman, may I ask the Commissioner how many of his men are used as undercover men in that field, to discover...

Commissioner Lindsay: It is not policy to discuss police investigational matters.

Mr. Valade: No, no; I just wanted to know how many men were involved in that.

• 1110

You must have files on the users and the pushers and the wholesalers. How is it possible that such a great amount of trafficking going on? If you have files you can get at the source of the distributor of this drug. Is it not possible for you to curb it by getting at the source? You probably have files to enable you to control at least 95 per cent of the distribution on the market.

Commissioner Lindsay: Yes. This is what we are continually attempting to do. The point is, of course, that the sources of both hard narcotics and marijuana, are outside our country. It is a matter of trying to shut off entry and of going to the sources and by putting pressure on the police forces of the countries from which this is emanating.

Mr. Chairman, there is just one other thing I might mention. One year ago at Interpol a very strong resolution was passed by the representatives of 103 national police services to the effect that every endeavour be made to bring to the attention of our respective governments the danger of marijuana in promoting the switchover to hard narcotics.

Mr. Valade: May I just ask one further question. I suppose you had a delegation in Peru at the last Interpol Conference?

Mr. Lindsay: This is correct.

Mr. Valade: I suppose you discussed that aspect of the problem?

Mr. Lindsay: Yes, we did. However, they have a separate problem down there, cocaine, which we do not have. It comes from coca, which they grow. That is their major problem, but they also have some heroin.

The Vice-Chairman: I will now return to Mr. Gilbert and I wish to thank him for being so patient in allowing the numerous supplementary questions.

Mr. Gilbert: Mr. Chairman, I want to direct my questions to the Deputy Commissioner. Mr. Kelly, you made a very strong request for the retention of offences in connection with marijuana as indictable offences, and I am sure you have heard the evidence that 80 per cent of these convictions in marijuana cases affect persons between the ages of 16 and 25. I am also sure that you appreciate the effect of a criminal conviction with respect to employment, with respect to travel and with respect to bonding. I wonder if you are aware of the trend that is taking hold in different countries in Europe with respect to this offence, where the magistrate hears the evidence and then he does not rule on the offence, he adjourns the case *sine die* and allows it to extend for a period of say, 18 months and if a similar offence is not committed by the accused, then the charge is dropped. I am sure you appreciate the seriousness of an indictable offence, especially with regard to a young person. Is it not time that we took a fresh approach to this problem and directed our courts to deal with these things which, by their nature, may be more than criminal, they may be psychiatric.

Mr. Kelly: As I have said, we are also very concerned about this. We are probably more conscious than anybody else or as conscious as anybody else about the effect of a conviction on a young person. I think the only thing I said was that before we get to the real meat of this problem it would be dangerous for us to relegate this kind of an offence to a rather innocuous offence in the minds of the people. Then I said that the indictable offence under our present law, where we are allowed to fingerprint, enables the police to follow the convictions of people if they commit more than one offence. I am certainly not a lawyer but I do think that it is not beyond the ability of the law, or in the administration of certain Acts, for the person who has been convicted of the offence to have this offence obliterated

in some way if after a period of two, three or five years, whatever it may be, there has been no conviction, and I think this is a problem that somebody is talking about in other fields.

• 1115

Mr. Gilbert: At the moment the Solicitor General is not too anxious to...

Hon. G. J. McIlraith (Solicitor General of Canada): This information about the Solicitor General should not be permitted to go on record.

Mr. Kelly: In any case, gentlemen, that is not my point. My point is that with the problem we have in the law enforcement field in marijuana should not have one of the tools taken away from us by now relegating this offence to a summary conviction offence under some other act.

Mr. Gilbert: Just one final question of the Deputy Commissioner. What preventive measures is your Department taking with regard to these offences in connection with marijuana, and so forth? Is there any educational problem that the RCMP is pursuing?

Mr. Kelly: You mean with the public?

Mr. Gilbert: Yes, with the public.

Mr. Kelly: I think I answered that quite fully with Mr. Valade. I said that we do what we can. We have problems in taking knowledgeable people from the enforcement field and putting them into the educational field. We think that is mainly a problem for Health and Welfare. We have promised to assist them where we can. We are asking that films be made available. We have had discussions over the last two or three weeks on this problem. The Health and Welfare of the Department of Consumer Division, have now assumed responsibility. I think they were going to take up this problem with the health ministers at the conference last week, whether they did or not I do not know, and then they were going to set up places of contact within the provinces. We have agreed that we will help to develop these places of contact so that we can get as much education in the field as possible, but basically it is going to be difficult for us to do all that is required of us in this field.

Mr. Gilbert: Thank you, Mr. Chairman.

Mr. Lindsay: May I say, Mr. Chairman, some time ago that two of our men were

authorized to go on television on this matter, one on the West Coast and one in Ottawa. Some of our men who are knowledgeable in this field are going into the schools and talking about it.

The Vice-Chairman: Do you have other questions on other subjects, Mr. Gilbert, that you would like to ask?

Mr. Gilbert: No.

The Vice-Chairman: Are there any other questions on the subject of marijuana?

Mr. Hogarth: I have one. Deputy Commissioner Kelly, I could not agree more with your suggestions with respect to the first offence problem. I agree with you entirely. However, I have some concern over the suggestion that you can proceed on an indictable offence by way of summary trial at the option of the Crown. The great concern is this. As I understand the Budd and the Adelman cases, which really laid down the principles upon which first offenders should be sentenced for marijuana, it was because the offence was indictable and it was because of the maximum penalty that it carried that led the Court of Appeal to believe that a rigid view should be taken with respect to this particular drug. Would you agree with my proposition that rather than reduce the maximum sentence, rather than change it to a summary conviction offence, that the Department of Justice instruct the local narcotics prosecutors that in particular cases, in considering the provisions of section 638 of the Criminal Code, that is to say, the section on suspended sentences, the prosecutor should be instructed to advise the court that the Crown favoured a suspended sentence in this instance.

My concern is not for the person who is in the strata of becoming a hard heroin addict. My concern is that in the school my children go to, and the school one will go to in the next year or so, there is marijuana. There are 2,200 to 2,300 children in that school. Some of them who come from families with exactly the same background as mine are going to try "pot". Some of them are going to get picked up. I do not think six months in Oakalla is the answer to that boy's problem. I think there should be suspended sentence in certain cases. I agree with you that there should not be a lessening of the nature of the offence because of subsequent offences.

Mr. Kelly: Right. Let me clear up the beginning of your statement. At the moment

the law is that it is an offence which is punishable on indictment. What I have said is that we would have no objection to it being changed, but that it still remain an indictable offence punishable on indictment or summary conviction at the request of the Crown.

• 1120

Mr. Hogarth: I beg your pardon. You mean the information will be laid at the option of the Crown, as in cases of impaired driving or common assault?

Mr. Kelly: Yes. I think if the circumstances required the Crown to consider a summary conviction offence, and certainly there would be no objection from the police on this level if the circumstances were such that it was proper, then I think the sentence would take care of itself.

Mr. Hogarth: I find myself harsher than you are, which is most exceptional.

The Vice-Chairman: I have Mr. Chappell and Mr. Valade on the same subject, and then I will recognize Mr. MacEwan.

Mr. Chappell: I wanted to ask how long these films are that the Commissioner spoke of?

Mr. Kelly: Just about one-half hour each.

Mr. Chappell: Mr. Chairman, I think this subject is one of the most important that could possibly come before us, its being in the nature, perhaps, of a social disease. I personally would like to see those films. I do not think we can get too much information on it.

I wonder whether you might consider asking the other members if they would like to see them.

Commissioner Lindsay: Mr. Chairman, we would be delighted to set this up and have you come either to our headquarters or to "N" Division and see these films.

An hon. Member: We could put them on the wall.

Mr. Kelly: I am sure we could arrange it; we could get a screen, we could do anything you would like.

The Vice-Chairman: We will take this suggestion into consideration with the steering committee and discuss the possibilities of presenting this film at a later date. Mr. Valade?

Mr. Valade: Mr. Commissioner, what is the average sentence for marijuana users in the courts? Have you got statistics on that?

Commissioner Lindsay: Traffickers at the present time are being sentenced to from six months to two years and the users—those having possession—anything from a suspended sentence to perhaps three to six months.

Mr. Valade: The object of my question was to ask your opinion. Do you think that the penalties imposed on pushers or the traffickers, as you call them, are sufficient relative to the users? Do you have an opinion on this problem?

Commissioner Lindsay: The trafficker is really the problem; the one who is introducing it into the country and into our schools.

Mr. Valade: My question was to find out whether the courts are imposing sufficient sentences on the traffickers. Would it lower the incidence?

Commissioner Lindsay: What we are finding now, of course, is that the age of these traffickers is much less; they are younger than they used to be and, with relation to the age, a sentence of 18 months to 2 years is a pretty adequate sentence.

Mr. Valade: You are talking about a trafficker, but certainly there is a supplier to the traffickers. There are categories I suppose in this procedure of those who are used as, let us say, the wholesaler, and the other who is the supplier. Certainly these people are set up in having their distributors in schools and public places or universities and there is usually a supplier who has ramifications and supplies this. Are there different stages of conviction? Are there different categories of conviction?

Commissioner Lindsay: There are different categories. The majority of the primary suppliers are outside of our country and this applies to both marijuana and the hard narcotics. The couriers who carry the hard narcotics into the country are getting much more substantial sentences than I indicated, because I understood your question as relating to the ones that are traffickers at street level in marijuana in particular.

Mr. Valade: I was more interested in those; I am just talking about distributors or wholesalers. I am talking about these people

who bring in the bulk and distribute the products.

• 1125

Commissioner Lindsay: Marijuana or hard narcotics?

Mr. Valade: Yes, marijuana.

Commissioner Lindsay: Marijuana; they are quite often young people and, in fact, sometimes university professors.

Mr. Valade: Thank you.

Commissioner Lindsay: I might mention that the latest case in Ottawa was a student who brought it from Israel. He brought quite a substantial quantity and I think the sentence there was two years.

An hon. Member: I think it was six months.

Mr. Valade: It was six months? Thank you.

The Vice-Chairman: Mr. MacEwan?

Mr. MacEwan: Did you say, Mr. Chairman, that arrangements will be made to see this film at the earliest possible time?

The question I have is on a mundane matter, but I want to ask the Commissioner what are the instructions, or what is the policy in force, concerning calls to accidents on highways? It has been brought to my attention that calls have been made to detachments and the officers ask if there has been personal injury. If there have been injuries they come and other times they do not. Is there any over-all policy in regard to this matter?

Commissioner Lindsay: Yes, there is, and the policy is set by each Attorney General on the advice of whoever is in charge of traffic act enforcement. It varies; in New Brunswick it is the Registrar of Motor Vehicles; in other provinces it could be under the Department of the Attorney General and we have what we call division orders published in those divisions. They are separate green sheets in our instruction book for each province concerned and it varies from province to province.

Mr. Kelly: On this point I might say that the police are not required now generally within the country—and I am talking more about municipal police than the RCMP—to attend accidents other than where there is personal injury unless the damage is \$100 but this is creating such a problem for the police forces that one of the resolutions at Granby

of the Canadian Association of Chiefs of Police this fall recommended that the rule be changed, and that in view of inflation, the number of accidents, the drainage on police manpower, the amount now be set at \$200. That is the program that is going back to the AG's.

Mr. MacEwan: I have just one other question. Deputy Commissioner Kelly answered Mr. Hogart's question in regard to charges on the use of marijuana. Did the Deputy Commissioner say that he believes the action should be taken initially by way of indictment and then, if the circumstances warrant, your indictment would be dropped and the Crown would proceed by way of summary conviction? I was not quite sure.

Mr. Kelly: I suggested that the police, certainly the RCMP, would have no objection if the present law which maintains possession as an indictable offence were to be changed to read that the offence still remain indictable, but that it could be proceeded with by way of indictment or by summary conviction at the wish of the Crown.

Mr. MacEwan: That is fine. Thank you, Mr. Chairman.

The Vice-Chairman: Mr. Brown?

Mr. Brown: Mr. Chairman, I have a question for the Commissioner. I have heard rumours in my constituency that it may be the intention of the Royal Canadian Mounted Police to cease enforcing the law as they have at present on the Six Nations Indian reservation. I would like to know whether you have any comments on that and also whether you might take the opportunity to comment on whether you have any other approach in enforcing the law on the Six Nations Indian reservation than you would in enforcing it in any section or area in the country?

• 1130

Commissioner Lindsay: There is no different approach, but in connection with all of the Indian reservations in the Province of Ontario, the Ontario Provincial Police some years ago—and my guess is that it was 1961—agreed, because of the fact that they had detachments located in the areas to take over the enforcement of the Criminal Code and provincial statutes on Ontario Indian reserves. That left us with the federal enforcement and we have continued that enforcement in the Province of Ontario. It materially

reduced our work on the reserves and in some instances—I think in all instances now—it has enabled us to withdraw our detachments from the reserves and place them more strategically for general federal enforcement that is of the Indian Act. We are still on the reserves. We are in close proximity. The Indian Act is still enforced by us. Income Tax and customs excise preventive duties, of course, can be performed far more strategically now. That is why in these instances we did withdraw from the Indian reserves, and the Ontario Provincial Police took this over very quickly and very effectively.

In connection with our approach to the policing of Indian reserves, and this applies not only in Ontario, but in the other provinces, we have adopted quite recently suggestions made to us by the Department of Indian Affairs that we train Indian special constables. This we are doing right at the moment. We have a training course in Winnipeg at the request of the regional superintendent of administration, Department of Indian Affairs and Northern Development, to supply several Indian supernumary special constables in the Province of Manitoba with some form of police training. We set up a course, some of it lectures and some of it practical. After giving them lectures we send them out to Portage La Prairie and Selkirk so that they can actually see municipal enforcement in progress, and then they will go back to the reserves and act as Indian special constables on those reserves.

We had a similar request in connection with the Caughnawaga Indian Reserve, just outside Montreal. We are training here at Rockliffe right at the moment, this week and next, five Indian special constables, and they will go back to Caughnawaga and perform there as, I suppose you would call them, municipal police.

This is quite a recent development. Of course they will be under the supervision of our detachments.

Mr. Brown: Mr. Commissioner, if an Indian should take one of the courses that you give in law enforcement, and later apply for admission to the Royal Canadian Mounted Police, could he have an equal opportunity to serve in the Royal Canadian Mounted Police if he wished?

Commissioner Lindsay: Yes, indeed, if he is qualified. We have educational standards, of course.

If you are asking about these same special constable, we take single men into the Force

and they get a very rigorous training, and this matter of posting to perhaps five or six different areas to train them out, would not be feasible with married men. We actually have, of course, Indians in our regular force.

Mr. Brown: That is what I understood.

Commissioner Lindsay: Oh yes, this is right. We have Indians in the Force. They come in through the regular channels, take our training, and they are in the field at the present time.

I was not quite sure of your question. We would not take people unless they were adequately qualified—this is for the regular force—and unless they were single, because of the hardships they would be up against. But we are quite prepared to train more of these special constables.

• 1135

Mr. Brown: But if one of these young men training to be a special constable did well, can I take it that he would be in a very good position to be accepted into the Royal Canadian Mounted Police?

Commissioner Lindsay: Oh yes, if he met the qualifications, definitely. And if he did not meet all the qualifications, we would certainly be pleased to pick him up as one of our regular special constables. We use them for jail guards and that sort of thing.

Mr. Brown: I understand from your answer to my question that the Royal Canadian Mounted Police Force has given up enforcing the Criminal Code provision on the reservations.

Commissioner Lindsay: In Ontario.

Mr. Brown: In Ontario. That is what I wanted to make clear.

Mr. Commissioner, I have one more question. I did not understand when I looked for the first time at the Estimates for the Royal Canadian Mounted Police in connection with administration, there was quite an increase in administration costs. I wondered whether provision was made in those estimates for a revised salary for the officials and officers in the Royal Canadian Mounted Police. Is it in the Estimates?

Commissioner Lindsay: We do not have that in the Estimates, but when there is a revision of the pay scales, it is provided in the miscellaneous, an unforeseen vote of the Treasury Board.

Mr. Brown: Thank you very much, Mr. Commissioner.

The Vice-Chairman: I understand the Commissioner has further information to give you on the previous line of questioning, on provincial and municipal agreements.

Commissioner Lindsay: To clarify one of the answers that I gave. One of the members was very interested in the matter of our provincial and municipal contracts. We have approximately 6,000 men on these contracts. That is eight plus the Northwest Territories, let us call them provincial contracts, and 132 municipal contracts. Six thousand men at \$12,000—round figures—per capita cost; that equals \$72 million. It is estimated that if we were purely a federal force, we would require 50 per cent of this strength, and that would be \$36 million. The provinces and municipalities would need one third more men, 8,000 at \$12,000 each, that is \$96 million. The saving to the provinces and municipalities under our present arrangement is about \$36 million, and if we had a federal force operating in the same areas as provincial and municipal forces, there would be an additional cost, let us say to the country generally, of \$60 million. The federal government benefits very much more from efficient police work through a national police force with our police network, with standard training, standard equipment including telecommunications equipment, wire-foto, all those things I mentioned before. Of course, at the same time we have trained men to deploy in the field of organized crime and federal statutes.

I called it the grey area where there is benefit to both. The federal government does benefit from this. How you put a price tag on police training and that sort of thing...

Mr. Valade: Mr. Commissioner, you mentioned that these men are valued at a cost of \$12,000. If they were on the municipal force, certainly the cost would not be the same because then you would have to incur travelling expenses and boarding expenses and the like. I do not think the cost per man would be the same if the police strength was operated directly under municipal administration.

Commissioner Lindsay: The cost perhaps would not appear to be that high, but the difficulty is that they cannot get trained policemen, and this has been a grievous problem to some of the Attorneys General, and particularly the Attorneys General of Saskatchewan, Manitoba and Alberta. That is why

they want us to carry on these municipal contracts because they have lost their own police forces. They are losing them still. There are one or two in Nova Scotia that we are policing now on a temporary basis because the police force dissolved. They cannot offer them any promotion. All they can offer them is low salaries, and the quality is way down. In this day and age where you have travelling criminals and organized criminals who can hit anywhere in Canada, it is most important that we have people who are familiar with our electronics, our telecom network, and who are fully trained and know how to co-operate.

• 1140

Mr. Valade: Being from a large urban area—Montreal, of course, we do not avail ourselves, I think, in Quebec. In what part of Quebec do they avail themselves of the services of the RCMP?

Commissioner Lindsay: They avail themselves, of course, of the national police services; these are available to all police forces in the country.

Mr. Valade: With regard to specific problems relating to the Criminal Code?

Commissioner Lindsay: That is right, and our National Fingerprint Bureau, our wire photo, we have our telecommunications network tie-in with theirs. They avail themselves of our Crime Detection Laboratories and our police *Gazette*, which is in the French language; we have our co-ordinators who work closely with them and, of course, our crime squads—our NCIU people—and that is purely of assistance at the federal level to the provinces.

Mr. Valade: If I follow this logic, Mr. Commissioner, it would mean that it would be better to have just a single police force across the country and the provinces and municipalities would save a lot of money; that would be a logical conclusion.

Commissioner Lindsay: I cannot see that.

Mr. Valade: I want to discuss another line, Mr. Chairman, and may I say it in French? I see the goodwill of the RCMP to become bilingual; I must congratulate them for that.

[Interpretation]

I would like to ask you a few questions in French, Mr. Commissioner.

Mr. Commissioner, do you think that the RCMP...

The Vice-Chairman: Would you please wait a moment.

Mr. Valade: I think that an opinion has been expressed recently that Canada is identifying itself more as a Canadian entity. Do you think that the term "Royal Canadian Mounted Police" would not have more prestige if it were called simply "Canadian Mounted Police"?

[English]

Mr. Kelly: The Commissioner did not get the question. Maybe I can give him the question in English; I think this is a question that he should answer.

Commissioner Lindsay: Well, I am afraid I cannot comment on that one. That, again, is a matter of government policy.

Mr. Valade: No, I am being serious, Commissioner. I think it is government policy, but my question was based on the premise that the RCMP would gain in prestige and authority by identifying itself as a purely Canadian force by calling itself *la Gendarmerie Canadienne*—I do not know what would be the English translation.

Commissioner Lindsay: It is quite possible, particularly in the Province of Quebec and some other parts of Canada.

[Interpretation]

Mr. Valade: So we take it that your police force would have no objection to this change in its name? Mr. Chairman, I will concede this morning.

• 1145

[English]

Commissioner Lindsay: Thank you, very much.

Mr. Valade: I was just saying that, there would not be any ill feeling or resentment from the force if a suggestion were made in this regard. Would there be?

Commissioner Lindsay: I cannot answer that; this is one of the areas that we have not given any consideration to.

Mr. Valade: This is an attitude that I want to determine. I will go on, because I think this is a subject that can be discussed for a long time.

I would like to know in what light your force considers the role of Parliament toward the RCMP? What is your approach with members of Parliament whenever there are

some communications or dealings or information requested by members of Parliament? Do you feel that your force should give information to members of Parliament or not, unless it comes through the Minister of Justice or the Solicitor General?

Commissioner Lindsay: We are approached by members of Parliament almost daily; I have many calls from them on various topics. Quite often they are requests from their constituents for information concerning the force. There are several a week.

Mr. Valade: I am asking this question because at one point I was asked to communicate with your RCMP office in Montreal and I was told very bluntly—of course, there was no personal attack by myself on anyone; I was just trying to find out the position—by a superior officer that they did not care about members of Parliament, that they were just considered as regular citizens in their view. I think our function is one of representation for the public and I just want this to be discussed this morning because I would like to know if your officers, or anyone on your force, have indications as to their dealings with members of Parliament?

Commissioner Lindsay: I think you encountered someone who had just been paraded to the Sergeant-Major and was feeling very much disgruntled.

Mr. Valade: Maybe he was the Sergeant-Major.

Commissioner Lindsay: Then certainly he would have been paraded afterwards because this, of course, is not the attitude.

Mr. Valade: Could you give us your opinion of this? This is a straightforward question and I would like to have a straightforward answer.

Commissioner Lindsay: There are areas, of course, where you could obtain information quite freely; there are other areas in connection with investigational techniques and specific cases before the courts where our men are simply instructed...

Mr. Valade: I want to make it clear that I am not provoking anything, Commissioner. I want to be clear that we are responsible enough, I hope, that we would not try to seek information which is not free for disclosure by the RCMP. I am just talking about a climate of co-operation between the RCMP with members of Parliament.

Commissioner Lindsay: I am very surprised to hear that the climate is other than good.

Mr. Valade: Then maybe I will send you a copy of the letter I sent after this communication. This I wanted to establish because it is very important for members of Parliament.

Commissioner Lindsay: It is, indeed. Deputy Commissioner Kelly has a comment.

Mr. Kelly: As the recipient of a lot of these requests, I have to look at them in one or two categories. If it is information that is available to the public, and sometimes even when it is not available to the public, because it is a member of Parliament we might go a little further and see that he gets it because we know he has a representative capacity.

Then, of course, sometimes I am asked for information which certainly I have to be very careful about because it may be something that will become a subject for discussion on the floor of the House.

I would find myself in a very difficult position if I had given some member of Parliament information of which our Minister was not apprised, or it was some answer that I had given a member of Parliament that would embarrass the police, and so on. But I do not think you are talking about that kind of information.

• 1150

Mr. Valade: You are right; I am not.

Mr. Kelly: Just the other day I think a member of this Committee raised an issue through the Solicitor General. It came to us and I think we were able to resolve the situation very clearly and in the interest of the individual, and we did all we could as quickly as we could to see that he got the information.

Mr. Valade: I do not want to beat around the bush; I will just illustrate what I had in mind. I was asked by one of the young electors in my riding to contact the RCMP because a student who had a shotgun in the trunk of his car happened to be in a wildlife area but, at the same time, he happened to be in a place where they were allowed to shoot sea dogs, or something like that. Not seals—it is a kind of seal, it is down in the St. Lawrence and that was the season when these people were allowed to shoot.

There was a conflict there and the RCMP seized the gun and they sent him a subpoena to appear before the courts. This young fel-

low did not know why he was arrested because there was a conflict in that position. I intervened asking the RCMP if they would consider the conflict of the two situations and grant the benefit of the doubt to that young student; loss to him was about \$250.

This is when I was told that they did not care about members of Parliament; they were considered as any regular citizen and this fellow had to abide by the rules of the book. This is why I am asking the question. This could happen in other fields.

Mr. Kelly: I think you are quite right in asking the question. I think your constituent would have seen that by having been served a subpoena he was charged with an offence. I think, largely, it was a waste of time to go to the police. I think the place to have made the representation was in the court, but just the same, having gone to the police, I think the police should have said to you, "We appreciate the conflict. We would suggest to you that you make sure that your constituent gives this in court as a defence".

Mr. Valade: Yes, I would have complied with this, and not being a lawyer I want to let you know this. I tried to settle the thing out of court because there was no fee allowed for my services.

The Vice-Chairman: We know your profession is...

Mr. Valade: In another field, Mr. Commissioner, how many officers earning about \$10,000 are actually bilingual? Would you have that?

Commissioner Lindsay: We have it right here. The last check shows that 8.9 per cent of our entire membership is bilingual and 14 per cent of our officers. There have been a number of retirements and I think now it is about 12 per cent of our officers and about 10 per cent of our other members.

Mr. Valade: Ten per cent?

Commissioner Lindsay: Yes, and all in the Province of Quebec.

Mr. Valade: All in the province of Quebec, which means that there is only 10 per cent of those who are non-officers—this 10 per cent includes all your force?

Commissioner Lindsay: The 10 per cent includes all the regular members of the force.

Mr. Valade: Which means of all your forces, then, there is only 10 per cent who could become officers.

Commissioner Lindsay: No, not at all. No, we have a higher percentage of bilingual officers than we have of bilingual men in the ranks.

Mr. Valade: Well, this is what I am saying. Those who are now in the ranks and can aspire to become officers, since your percentage is only 10 per cent of that class who are bilingual, then it cannot be possible that this 10 per cent will make a high percentage of bilingual officers later on as a consequence of that.

• 1155

Commissioner Lindsay: No, we are keeping up to the present percentages. Many of our people who are included, of course, are in Western Canada.

Mr. Valade: You mean you are limiting bilingualism to 10 per cent of the over-all forces?

Commissioner Lindsay: No, we are not limiting them but in every promotion list there is always a percentage of bilingual officers, and that is a higher percentage than it is with others.

Mr. Valade: Well, I am not speaking of others. In others there are some flaws to correct this regard, too. But if, in your high ranking officers, you have 14 per cent who are actually bilingual, and in the over-all forces there are only 10 per cent, how can you expect to have more than 25 per cent of bilingualism in your officers if you do not recruit?

Commissioner Lindsay: We are training them, of course.

Mr. Valade: You are training the present ones?

Commissioner Lindsay: The trainees.

Mr. Valade: I see.

Commissioner Lindsay: We are training as many as we can get on these courses.

Mr. Valade: I see, but not only in Quebec; you are training them all over Canada, are you?

Commissioner Lindsay: Oh, yes; we are bringing some in. As was pointed out, we are

bringing in a half troop of recruits to Hull to train.

Mr. Valade: Actually I think all your reports—interdepartmental reports—that are made from officers to higher ranking officers must be made in English under the present circumstances. Is that not so?

Commissioner Lindsay: No, we have specific instruction out and this is in the evidence of a previous session.

Mr. Valade: I see.

Commissioner Lindsay: We have specific instructions that they may report in the language of their choice.

Mr. Valade: But not bilingual; they make it in either French or in English but not in both languages, is that correct?

Commissioner Lindsay: Oh, no, they have not time, of course.

Mr. Valade: They have not time for that.

Commissioner Lindsay: They have no time to use both languages, but we have them report in the language of their choice.

Mr. Valade: Very well. Let us go on to another subject, Mr. Chairman.

In regard to Article 179 of the Criminal Code which falls under your authority to enforce, I think. Would you have any statistics so far as convictions or procedures or indictments in abortion cases are concerned?

Mr. Kelly: If we had any they would be related only to the RCMP and this would not cover the large municipal areas such as the cities. We actually do not have abortion by itself, so we could not give them to you. But even if we did give them to you, I wonder if they would meet the reason for the question, because we would not cover the large areas such as Quebec, Ontario and the large cities outside of those two provinces.

Mr. Valade: But you are called upon to enquire in abortion cases?

Mr. Kelly: Yes, we are, in those areas in which we actually enforce the Criminal Code.

Mr. Valade: Which areas would there be?

Mr. Kelly: That would be the four western provinces, the Yukon, the Northwest Territories and the Maritime provinces.

Mr. Valade: I see. All the provinces except Quebec and Ontario?

Mr. Kelly: Right.

Mr. Valade: Does the same thing apply to charges of homosexuality?

Mr. Kelly: Yes, we cover the full Criminal Code in the areas that I have mentioned.

Mr. Valade: Except the cities?

Mr. Kelly: Except the cities.

Mr. Valade: And the same thing applies also, I must presume, to lottery infractions?

Mr. Kelly: That is right. Except again we will say that certainly the organization and the development of lotteries takes place in the larger centres.

Mr. McCleave: You have not tried to arrest the Mayor of Montreal?

Mr. Kelly: We have not, but you will appreciate the fact that the matter is before the courts.

Mr. Valade: Do you have any control over the foreign lottery tickets coming into Canada?

Mr. Kelly: We certainly do because we are interested in the importation of these lotteries.

Mr. Valade: This is your direct responsibility?

Mr. Kelly: Yes, under the Customs Act but then there is provision under the Criminal Code, of course, for possession and selling of these things which is ours at any time, whether we find it within the cities.

Perhaps I should say that our co-operation with the city police forces and the provincial police forces in this country was never better than it is today. We work exceedingly closely, and that includes the cities of Montreal, Toronto, Vancouver and Winnipeg, and really in this organized crime area, we now have a prosecution before the courts in Calgary which involves the whole problem of gambling across the country.

• 1200

All provinces are co-operating in the prosecution, all police forces involved are co-operating in the prosecution, the RCMP are co-operating as a police force with responsibilities outside of the city, and the RCMP has been up until now the co-ordinating factor in order to bring these police forces together with a view to having a prosecution

set up, with a view to the appointment of a prosecutor, and with a view to prosecuting successfully this national gambling practice.

Unfortunately the charge was laid over a year ago—and this is the problem in organized crime—and because of the legal technicalities that are being followed by the defence, we have not yet reached the point of a plea in this kind of offence and I might say to this Committee that in the field of organized crime, we can get all the co-operation between police forces, all the co-operation from governments, but unless we are able to process these offences through the courts, we are going to be defeated.

Mr. Valade: I am inclined to agree with you, sir, in this regard, and I personally feel that the courts procedural avenues do delay the procedure of law. I completely agree with you and I regret being a non-legal man.

Mr. Kelly: May I say something? I am not criticizing the courts.

Mr. Valade: Well, I am.

Mr. Kelly: I am not criticizing the courts.

Mr. Valade: I understand your position, sir, but I take it on my own responsibility to do that in this Committee because I believe with you that the procedures that the legal profession can follow before the courts are causing great prejudices in many cases, either regarding the Criminal Code or any other procedures in the courts, and I wish that my colleagues who are lawyers would really scrutinize their consciences in this regard because, as a layman, I think this is causing great prejudice in our country.

Mr. Kelly: Mr. Valade, as a couple of non-legal types, may I refer you to something that is very well known within the legal field and that is that justice delayed, is justice denied.

Mr. Valade: Yes, I agree with you. I will let my colleagues who are lawyers take this up with you. Concerning lotteries you say that it is your responsibility for entry of gambling into Canada. When you say "gambling"—I know you want to avoid the word "lottery"...

Mr. Kelly: No, no; lottery tickets I was referring to.

Mr. Valade: It is included but it is not pin pointed specially and I want to pin this down myself. I think that every year there are many foreign lotteries coming into this country.

Now, we learn about the winners, we learn about those people selling tickets, and we are wondering how it is possible that foreign lotteries can come into this country and there is so little prosecution in this regard, because these things have been going on for 25 years in this country at a rate of three or four a year—I mean foreign-organized lotteries—and I am surprised that there are not more proceedings before the courts or some other kind of impeachment to stop this entry into Canada of foreign lotteries.

I know there is an amendment to the Criminal Code that is going to be discussed, I hope this Session, and perhaps this would clear the matter, but in the meantime what has the RCMP done to prevent this inflow of foreign lotteries into Canada?

Mr. Kelly: We are doing all we can, in so far as the tickets are concerned, but I take it that your question now is related to the winner.

Mr. Valade: And the seller.

Mr. Kelly: Where we find information on the seller, we prosecute. Where we find information on possession—and usually it is in a jurisdiction responsible for the enforcement of the Code and we have not got that particular enforcement—we turn that over to the local enforcement body, usually the city or the town police force.

I do not know at the moment of any case where a winner has been in RCMP jurisdiction. It has usually been in cities, towns and so on, and I wonder exactly the same thing as you are wondering.

The Vice-Chairman: Do you have any other questions, Mr. Valade?

Mr. Valade: I will just finish; I beg the indulgence of the Committee. I will not strain this, I will come back later on but I would just like to ask the Commissioner...

Mr. Kelly: May I say, Mr. Valade, that the Minister reminded me that there was an unsuccessful prosecution in Ottawa some years ago, but apart from that, do not forget that a lot of the evidence required for this prosecution is not in the country.

• 1205

Mr. Valade: But certainly some evidence can be traced to the purchaser.

Mr. Kelly: You have the newspaper announcement and that is about as far as you can go at this moment.

Mr. Valade: When there is a question of surveillance, Mr. Commissioner, do you need the request of the Minister of Justice or the Solicitor General to put somebody under surveillance?

Commissioner Lindsay: I do not think it is possible for me to discuss police investigational techniques.

Mr. Valade: I was just wondering if it is required that you have authorization from the Solicitor General or the Minister of Justice whenever there is a question of surveillance, or do you just proceed on your own information?

Commissioner Lindsay: It depends on the type of surveillance.

Mr. Valade: I have in mind the President of the MIS in Montreal. According to the newspapers this person has been put under surveillance for some days or some weeks and the question has been put in the House. We have not had any answers, and I understand that . . .

Mr. Kelly: With the Minister's approval, I will answer the question in the House. The RCMP are not interested in MIS, have never been interested in MIS, have never had any surveillance on MIS, or any member of MIS and we were in St. Leonard purely on other police matters in a federal capacity.

Mr. Valade: Thank you, very much. That is all, Mr. Chairman.

The Vice-Chairman: Mr. Chappell?

Mr. Chappell: I understand we usually adjourn at 12 o'clock.

The Vice-Chairman: If you agree we could perhaps carry on. I have only one more speaker on my list, and if there is no further questions I would be prepared to ask if Item 15 could be carried.

Mr. Chappell: I have a question I want to ask the Commissioner. If he is going to be here next week, I am agreeable to let it stand. If he is not going to be here next week I would like to ask it today.

The Vice-Chairman: We already have had two sittings with the RCMP and we were hoping to conclude this portion of our work today.

Mr. Chappell: All right. My question relates to trying to get some help or guidance for universities, and one in particular. Having in mind the large range of drugs and other poisons available today, many of which are sold commercially—for example, the insect and weed killers the use of which I understand is very hard to detect—and the greater sophistication of equipment used by criminals, is there a public need for a university course in forensic science and detection of crime, in your opinion?

Commissioner Lindsay: Mr. Chairman, since this question was brought up the other day, we have conferred with the Director of our Crime Detection Laboratory and he has come up with a proposition that courses in the forensic sciences, which are not taught in Canadian universities at this time, leave something of a vacuum and that there is a requirement.

At the present time, in our RCMP laboratories we must either provide longer periods of in-service training to new incumbents, whether they are at the technical level or whether they are Ph.D.s, and these periods are longer than would normally be required if we had university courses available in the country.

We send key members of our laboratories to other countries to get this specialized training. For example, we found it necessary this year, in order to secure the services of a fully-trained forensic toxicologist, to send a member of our laboratories to the University of Maryland for graduate studies leading to a Ph.D. degree in forensic toxicology.

• 1210

Such a person will be capable not only of conducting toxicological analyses, but also of providing the necessary evaluation and interpretation of these analyses before a Canadian court.

It is almost impossible to engage personnel having these qualifications since there are only a few universities on the entire continent which provide post graduate courses in toxicology and, of course, as mentioned before, there are none in Canada. Competition for the services of the very few graduates in other countries each year is particularly keen. It must be emphasized that for our purposes the role of the forensic scientist is not that of merely providing routine analytical data but involves the additional complex functions of evaluation, comparison and interpretation of this data before the courts in an objective and

impartial manner to ensure that the accurate facts are brought out in court.

Because of the difficulty in getting trained forensic scientists, we agree that courses should be available in one or two of our universities for the purpose of graduating forensic scientists who will be available to work in this country. It would be valuable if, say, one or two universities could be encouraged to establish within their faculties either of medicine or science, such departments as forensic sciences at the graduate level leading to Master of Science or Ph. D. degrees in such specialized disciplines as forensic toxicology, forensic pathology, forensic immunology, forensic chemistry and other forensic sciences.

These people could then be available to train others particularly, of course, our own people, at the investigational levels. We have posed this specific question and it is agreed that there is a requirement.

The Vice-Chairman: Are there other questions, Mr. McCleave?

Mr. McCleave: Yes, I had one, but before I ask it I am sure the Commissioner will be pleased to know that we will be pressing the Solicitor General about the pay increases. I get stopped in a friendly way by Mounted Police officers every weekend with regard to them.

I notice that the mess ration allowance of \$400,000 for 1967-68 has disappeared this year and I wondered if there is an explanation of that. It is at the top of page 12 in the Revised Estimates.

Commissioner Lindsay: The reason for that, I understand, is that we now have a revolving mess account. Perhaps our Financial Officer could go into this, Mr. McCleave.

Mr. B. Lynch (Financial Officer, Royal Canadian Mounted Police): The concept of a revolving fund developed from a recommendation of the Glassco Commission, Volume I, in 1962, where it was recommended that government departments adopt the use of revolving funds. The advantage of a revolving fund is that it is a form of accrual accounting rather than with main estimates where the financing of it ends with each year. The revolving fund permits financial transactions to continue without any limitation through the years, so that we had a revolving fund approved in the estimates in an amount of

\$80,000 and all of the financial transactions in our 12 messes are handled through this revolving fund.

Mr. McCleave: I see. I take it, then, that in previous years the amount that was shown there—for example, \$400,000—somewhere else in the same budget would be shown as a recoverable item.

Mr. Lynch: Exactly.

• 1215

The Vice-Chairman: Are there any other questions?

Mr. McGuigan: I should like to have some information which I presume you would not have with you today. I am interested in seeing the curricula of your training programs. Do you have copies of the curricula you could send to all members of the Committee, or what arrangement could be made to provide us with this information?

Commissioner Lindsay: Yes, I think this would be made possible. We have many, of course, at the present time right from our recruit training. I did not elaborate previously on the intermediate and senior training courses. We have the training in administration, the SIT—Senior Instructional training—and the courses have different content. We could even explain how we are trying to work up to a senior police college in this country.

Mr. McGuigan: I would be pleased to have this information and I am sure the other members of the Committee would be too.

The Vice-Chairman: We will have this distributed to every member. Are there any other questions?

Mr. Gilbert: Mr. Chairman, I have just one short question. We have had a very serious problem of fraudulent bankruptcies, Mr. Commissioner, in the last few years and one of the recommendations that was made was the appointing of fraud squads to different provinces. I understand that this is now being done. I just wonder whether you have any report of the effectiveness of these fraud squads in cutting down fraudulent bankruptcies?

Commissioner Lindsay: Well, I do not have with me any particular summary of their activities. We have been watching very close-

ly. They have been developing some very important cases in the matter of statistics concerning fraud squads.

Mr. Kelly: Gentlemen, the latest statistic is that on the direction of the Attorney General of British Columbia yesterday we seized the records of 35 trust companies and we...

Mr. Gilbert: Are the banks fixed?

Mr. Kelly: Apparently it involves certain activities which they do not think should go on and that is going to keep us busy in British Columbia for quite some time, I can assure you. These are trust and financial companies.

Mr. Gilbert: We will save our questions for next year, Mr. Chairman, and really delve into it.

Mr. Kelly: I can give you some figures on cases if that is what you want.

Mr. Gilbert: I do not like to displease my clients.

Mr. Kelly: From October 1, 1967 to September 30, 1968, which is roughly a year—our fraud squads and bankruptcy squads are now in one—in bankruptcy we had 264 investigations, prosecutions were 159; securities frauds, 144 active investigations and 173 prosecutions—so an investigation would involve more than one person; combines, in which we are simply a form of assistance to the Combines people, 8 investigations, 4 prosecutions, and income tax frauds, 12 investigations out of which there were 8 prosecutions.

Mr. Gilbert: Thank you, Mr. Deputy Commissioner.

The Vice-Chairman: If there are no other questions, shall item 15 carry?

Some hon. Members: Carried.

Item No. 15 agreed to.

The Vice-Chairman: Is there any discussion or questions on Item No. 20 which is related to "Construction or Acquisition of

Buildings, Works, Land and Equipment"? It deals with the RCMP exclusively.

Mr. Valade: I would like to ask a question on this, Mr. Chairman. Does the RCMP intend to extend its facilities in Montreal?

Commissioner Lindsay: We had placed funds in these estimates for construction in the City of Montreal but because of the necessity of a cutback we had to remove the funds for the main construction. Consultants have been retained and they are in the process now of making working drawings for a headquarters in Montreal.

Mr. Valade: Is this just to extend the facilities? What is this new project?

Commissioner Lindsay: We want to bring our entire operation together. At the present time we have them on St. Catherine street and our CIB is in another commercial building. As a matter of fact we have a third installation there, partly occupied. We want to bring them all together.

Mr. Valade: What was the estimated cost of this building.

Commissioner Lindsay: Between six and seven million dollars. At the present time the matter of land, and so on, is in the estimates in the amount of \$200,000.

• 1220

Mr. Valade: It was not provided that it would be an extension of the existing west end on St. Catherine Street West.

Commissioner Lindsay: No, the land is within about two or three blocks of that site. The land has been acquired.

The Vice-Chairman: We have been discussing for close to three hours now. I understand that we will try to present the film we talked about previously at the next meeting of our Committee and, therefore, the discussion will still be open on Item 20 at that time.

Mr. Hogarth: I think we can pass it at the next meeting without the witnesses returning.

HOUSE OF COMMONS

First Session—Twenty-eighth Parliament

1968

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. Donald R. Tolmie

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

MONDAY, NOVEMBER 25, 1968

TUESDAY, DECEMBER 3, 1968

Revised Main Estimates for 1968-69,
relating to

Correctional Services, the Royal Canadian Mounted Police
and the Solicitor General.

APPEARING:

The Honourable George J. McIlraith, Solicitor General
of Canada.

WITNESSES:

From the Department of the Solicitor General: Canadian Penitentiary Service: Messrs. A. J. MacLeod, Q.C., Commissioner; B. P. Benoit, Director, Financial Services; H. F. Smith, Director, Inmate Training; *National Parole Board:* Mr. T. G. Street, Q.C., Chairman.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
Ottawa, 1968



STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. Donald R. Tolmie

Vice-Chairman: Mr. André Ouellet

and Messrs.

Blair,
Brewin,
Brown,
Cantin,
Chappell,
¹De Bané,

Gervais,
Gibson,
Gilbert,
Hogarth,
MacEwan,
MacGuigan,

McCleave,
Rondeau,
Schumacher,
Valade,
Woolliams—(20).

(Quorum 11)

Fernand Despatie,
Clerk of the Committee.

¹Replaced Mr. Marceau on December 2, 1968.

ORDERS OF REFERENCE

MONDAY, November 25, 1968.

Ordered,—That the Standing Committee on Justice and Legal Affairs be empowered and directed to consider and report on the subject-matter of electronic eavesdropping and on the subject-matter of Bill C-17, An Act to amend the Criminal Code (Invasion of privacy); Bill C-18, An Act to amend the Criminal Code (Wire Tapping, etc.); Bill C-24, An Act to amend the Criminal Code (Control of Electronic Eavesdropping and Wiretapping); Bill C-78, An Act to amend the Criminal Code (Wire Tapping, etc.), and to recommend legislative action which may be desirable and effective for its control.

MONDAY, December 2, 1968.

Ordered,—That the name of Mr. De Bané be substituted for that of Mr. Marceau on the Standing Committee on Justice and Legal Affairs.

ATTEST:

ALISTAIR FRASER,
The Clerk of the House of Commons.

[Text]

MINUTES OF PROCEEDINGS

MONDAY, November 25, 1968.

(5)

The Standing Committee on Justice and Legal Affairs, having been duly called to meet at 8.00 p.m. this day, the following members were *present*: Messrs. Brewin, Cantin, Chappell, Gibson, Gilbert, MacGuigan, Marceau, Tolmie (*Chairman*)—(8).

Also present: Mr. Howard (*Skeena*), M.P.

In attendance: The Honourable George J. McIlraith, Solicitor General of Canada; Mr. J. Hollies, Acting Deputy Solicitor General. *From the Canadian Penitentiary Service, Department of the Solicitor General*: Messrs. A. J. MacLeod, Q.C., Commissioner; B. P. Benoit, Director, Financial Services; H. F. Smith, Director, Inmate Training.

At 8.20 p.m., there being no quorum, the members present agreed to proceed informally and to hear officials of the Canadian Penitentiary Service.

The Chairman mentioned that it had not yet been possible to make arrangements for the showing of two films on the subject of marihuana.

The members proceeded to the consideration of the following item listed in the Revised Main Estimates for 1968-69, relating to the Department of the Solicitor General: 5—CORRECTIONAL SERVICES. Messrs. MacLeod, Benoit and Smith were introduced.

Commissioner MacLeod made a statement regarding the Canadian Penitentiary Service, and answered questions. Messrs. Benoit and Smith also answered questions.

Commissioner MacLeod undertook to supply the Committee with certain information and documents requested in the course of the meeting.

At the completion of the questioning, the Chairman thanked the witnesses.

At 10.00 p.m., the members present dispersed.

TUESDAY, December 3, 1968.

(6)

The Standing Committee on Justice and Legal Affairs met at 11.13 a.m. this day. The Chairman, Mr. Tolmie, presided.

Members present: Messrs. Brewin, Brown, Cantin, Chappell, Gervais, De Bané, Gibson, Gilbert, Hogarth, MacEwen, MacGuigan, McCleave, Ouellet, Schumacher, Tolmie, Valade, Woolliams—(17).

In attendance: The Honourable George J. McIlraith, Solicitor General of Canada; Mr. T. G. Street, Q.C., Chairman, National Parole Board, Department of the Solicitor General.

On motion of Mr. Gibson, seconded by Mr. Gilbert it was

Agreed,—That the Minutes of Proceedings and Evidence of November 25, 1968 be incorporated as part of the Committee's official deliberations.

The Chairman mentioned that members of the Committee had been supplied with a syllabus of training courses conducted by the R.C.M. Police, as requested at the meeting of November 7, 1968.

The Chairman called the following item listed in the Revised Main Estimates for 1968-69, relating to the ROYAL CANADIAN MOUNTED POLICE:

20—Construction or Acquisition of Buildings, Works, Land and Equipment	\$6,546,000
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Item 20 was carried.

In answer to requests made in the course of the meeting of November 25, 1968, the Minister tabled the following charts, copies of which were distributed to members of the Committee:

CANADIAN PENITENTIARY SERVICE

Comparative Average Populations and Annual per Capita Costs by Institution for the Fiscal Years Ended March 31, 1967 and 1968;
Inmate Population by Present Age as of December 31, 1967;
Rate of Recidivism in Penitentiaries;
Inmates in Penitentiary for more than Twenty Years.

The Committee resumed consideration of Item 5—CORRECTIONAL SERVICES.

The Chairman introduced Mr. Street, who made a statement pertaining to the National Parole Board, and answered questions.

The Chairman thanked Mr. Street for his appearance before the Committee. Item 5 was carried.

The Chairman called the following item:

10—Construction or Acquisition of Buildings, Works, Land and Equipment	\$19,422,000
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The Solicitor General answered questions.

Item 10 was carried.

At 1.05 p.m., the Committee adjourned to the call of the Chair.

Fernand Despatie,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Monday, November 25, 1968

● 2021

The Chairman: Gentlemen, it looks as if we may not get a quorum tonight but I think we should proceed.—Perhaps an 8 o'clock meeting is not as desirable as some. However, we had to have a meeting tonight.

Is it agreed that we take evidence and then at the next meeting ask that this evidence be incorporated in the Minutes and Proceedings?

Some hon. Members: Agreed.

The Chairman: Tonight we were supposed to have a movie on marijuana but, unfortunately, we were not able to get it. We do have the officials from the Canadian Penitentiary Service here and we will be hearing from them.

I should also state that at the last meeting we were discussing Item 20, Royal Canadian Mounted Police—construction or acquisition of buildings, works and lands and equipment. It was my intention to have this item carry but under the circumstances we cannot do this.

We now have before us Item 5 in the Revised Main Estimates for 1968-69 relating to Correctional Services.

We have as witnesses tonight the Commissioner, Canadian Penitentiary Service, Mr. A. J. MacLeod, Q.C., We also have Mr. B. P. Benoit, the Director, Financial Services, Canadian Penitentiary Service and Mr. Smith, the Director of Inmate Training, Canadian Penitentiary Service.

Commissioner, will you introduce your officials and then we will have questioning.

Mr. A. J. MacLeod (Commissioner, Canadian Penitentiary Service): On my immediate right is Mr. B. P. Benoit, Director of Financial Services for the Canadian Penitentiary Service. On his right is Mr. Hazen Smith, the Director of the Inmate Training Division of our Department.

Mr. Benoit came to us a few years ago from the Comptroller of the Treasury. Mr. Hazen Smith served as warden of Dorchester

Penitentiary and as Warden of Kingston Penitentiary and has been with us in Ottawa for about two years now.

The Chairman: Thank you very much, Commissioner. Would you like to make some type of opening statement or comment and then members can pose questions?

Mr. MacLeod: I have no prepared statement, Mr. Chairman, but I might mention a few things just by way of background interest about the Canadian Penitentiary service.

● 2025

We have at the moment some 6,800 inmates who are serving sentences of two years or more in some 34 institutions from coast to coast. Remarkably enough, of those 6,800 individuals only 100 of them are females. Seventy of those 100 females are serving their sentences at the prison for women in Kingston and the remaining 30 in the women's unit at the new narcotic addiction Treatment Institution at Matsqui in British Columbia.

The staff of the service numbers approximately 4,800 officers at this stage. About three years ago, when the inmate population of Canadian penitentiaries had increased dramatically over a period of three or four years from 6,800 to about 7,600, we felt that the rate of increase, which had been about four per cent per year for some 30 or 35 years, would continue and that by now in 1968 we would have some 8,200 inmates. Instead of that, over the last three or four years our population has either decreased or has held steady in any of the given four years so that now our population is about 6,800. That reduction of 800 in population is significant I think. A reduction of 800 inmates in the penitentiary population over a period of three or four years means a reduction of two in the number of quite expensive institutions that would have to be built because in 1960 the government of that day decided—and successive governments have taken the same view—

that Canadian federal penitentiaries would not have in them for training purposes more than 450 inmates. I might mention that in my opinion this was quite a forward step on the part of the administration because in this country, as in most of the states in North America, the pattern had been to build institutions for 700 inmates or 900 or 1,300, as the case may be, and as far as we knew there was no jurisdiction where a policy decision had been taken to limit the number of inmates to 450. But over the last four years now we have opened five new medium security institutions, each one with a maximum population capacity of 450. Those four institutions are located at the following places: one at Springhill in Nova Scotia, one at Cowansville in Quebec, one at Warkworth in Ontario, and one at Drumheller in Alberta. The fifth institution is the narcotic addict treatment institution at Matsqui, British Columbia about 65 miles from Vancouver, where the capacity is 300 males and 150 females, each of the sexes of course being confined in their own separate units and separated by about almost a mile of land.

One or two other items do come to mind. Until 1960 we had only one training school in the Canadian Penitentiary Service, a converted stately dwelling house in Kingston where we could enroll up to 20 officers at one time in the formal program of training. In the past three years we have opened a new staff college in Kingston where we can train 75 various types of officers at a time; also a new one at the City of Laval in Quebec just north of Montreal, where we can train another 75 or 80; and we have taken two old residences in New Westminster—one which was formerly the warden's house and the other formerly the deputy warden's house—and converted those to training purposes, so we can accommodate 25 to 30 officers there for training on a continuing basis.

• 2030

The over-all program for the future under the 10-year program of penitentiary development upon which we have been operating now for some five years is that in each of the five main divisions of Canada we will have a complete setup of institutions and inmate training aids that we require to carry on a comprehensive and well-rounded program of inmate training. Therefore in each of the five regions, namely the Atlantic provinces, Que-

bec, Ontario, the Prairie Provinces, and British Columbia we will have the following types of institutions. We will have maximum security institutions for those inmates who are likely to make active efforts to escape and are likely to be dangerous if they do escape, and they constitute about 35 per cent of our total inmate population. We will have medium security institutions for the 50 per cent of our population who are not likely to make active efforts to escape and if they do run away are not likely to be dangerous in the community. The remaining 15 per cent, roughly speaking, will be for those inmates who can be kept in conditions of minimum security where there are neither walls nor fences, indeed scarcely any locked doors because these inmates are ones who are not likely to walk away and if they do are certainly not going to be any danger.

We also have developed one special correctional unit at the city of Laval for the three or four per cent of our inmates who are thoroughly incorrigible and completely dangerous from time to time. There we carry on a comprehensive training program for this group of inmates. It is designed to hold at a maximum, if ever the need were to arise, some 150 inmates. At the moment we have 36, I believe, taking that kind of training.

Our plans also call in each region for the development of a reception centre—the type of institution that in Ontario or Quebec for instance would have a capacity of about 125 or perhaps 150 inmates. It is to these institutions that inmates will come from the courts upon conviction, and it is in these institutions that they will be analyzed, characterized and evaluated until finally they are sent out after the passage of three or four weeks on the average to one of the other types of institutions that I have described.

Another major type of institution which we are designing is the medical centre, one for each region. It is in these institutions that we will provide specialized training for borderline mental cases—the people who will not be accepted by provincial mental hospitals because they are not certifiable and yet people who will have a tendency to disrupt the program in any other type of institution where they are confined.

The final type that I would like to mention is the community release centre which, for ease of description, I tend to call our prison

boarding houses. These are large houses which we propose to operate initially in downtown areas in four of the larger cities of Canada where many of our inmates who are serving the last two or three months of their sentence can stay while they find employment or while they get adjusted to employment. It is only a few months ago now that we opened the first of these, the St. Hubert Centre in Montreal, where we have on a continuing basis some 14 or 15 inmates who sleep and engage in social activities there, but whence they go to their work. Just this last week we opened the first of this type of institution in Winnipeg. We have a property in Toronto which the Department of Public Works is fixing up for us, and we hope to have it in operation in the course of the next three months. Finally, we are still negotiating for a property in Vancouver to serve the same purpose.

• 2035

I think, Mr. Chairman, I have covered the ground as well as I can at this stage.

The Chairman: Thank you very much, Commissioner. The meeting is now open for questioning.

Mr. Gilbert: Mr. Commissioner, you said that there are 6,800 inmates in the 34 institutions that we have across Canada. Have you a breakdown of the age groups of these prisoners?

Mr. MacLeod: I do not have one immediately with me, but I can tell you that two-thirds of them are under 25 years of age. Certainly this information could be provided to you in due course. I am remiss in not having brought it. The reason I mention this is because it is only two months ago that for the first time in our 100 year history we got the kind of statistical information that we wanted about people who at any given moment are living in our institutions. We could always tell anybody what were the characteristics of the people whom we received in any given year or in any given month but we could not say what were the circumstances and the characteristics of all the people who were there on January 15, shall we say. I will produce that for you in due course.

Mr. Gilbert: Mr. Commissioner, have you any inmates that range between 16 and 18 years of age? The reason I ask is that, as you

probably known, under the Juvenile Delinquents Act of the different provinces you have a variance in ages and it may be that you would have a person convicted of a serious criminal offence in Ontario and be sent to Kingston whereas if that same person were charged with a similar offence, say, in one of the western provinces he would be treated as a juvenile delinquent.

Mr. MacLeod: That is quite right. We do have inmates who are 16 and 17 years of age, and we have some in every one of the age groups beyond 16. We find these mostly, in the Atlantic provinces and the Quebec institutions. There have been occasions when there have been 15 year olds in our institutions within the last few years. The worst case I think we have had was one about 15 to 20 years ago when a 12-year-old boy was sentenced to penitentiary in the province of Quebec.

Mr. Gilbert: I think that you are one of a group that sat on a commission with regard to juvenile delinquency...

Mr. MacLeod: That is right.

Mr. Gilbert: ...back in 1961, I think you reported about 1965, and there has not been any action to your knowledge with regard to amendments to the Juvenile Delinquents Act.

Mr. MacLeod: No. When we tabled our report we were pretty well *functus*, but I am sure that the minister's acting deputy will have some information for the Committee on that in due course.

Mr. Gilbert: I imagine that you are hoping that we implement those amendments to the Juvenile Delinquents Act as quickly as possible?

Mr. MacLeod: Oh yes. I would not undertake to speak for the Minister, but it all started with the statement in the Fauteux Report of 1956. The closing note in that report was that it is all very well to have criminal justice but what we need is some preventive justice. So we in our department have taken the view that the best way is not to have laws that will lock people up but customs and procedures that will keep people out of institutions in the first place—and that we call preventive justice.

Mr. Gilbert: Thank you. I will pass for the moment, Mr. Chairman.

The Chairman: Mr. Howard, please.

Mr. Howard (Skeena): Mr. Chairman, although I am not a member of the Committee, Mr. MacLeod mentioned some very interesting statistics and gave us some very interesting information about population and the like, and I wonder if I could follow that up.

The first item that was dealt with was the arresting of the normally four per cent increase in inmate population within the last couple of years or so. Could you say why this is so? What is the assessment of the reason?

• 2040

Mr. MacLeod: We have not got to the point yet where research has told us what produced it, but our educated guess is a much higher incidence of probation which would keep people out of courts in the first place—because a lot of provinces started developing probation services four years ago, a high incidence of parole from our own National Parole Board and pretty good times in the community as far as employment is concerned—there were jobs for people who had the motivation to work, and to some extent I think our own programs that we had been trying to develop from 1958 through to 1963 and 1964. It would be impossible to say which of those had the greatest effect but I think our educated guess would be that perhaps probation did.

Mr. Howard (Skeena): I am sure that you had a projection into the future of capacity requirements of penitentiaries based on the four per cent, if nothing else. What is the projection at the moment in terms of building new institutions? I am not relating my question to new institutions to replace old ones for arguments sake, such as that horrendous thing at St. Vincent de Paul, but total carrying capacity of the institution. What do you project in that area?

Mr. MacLeod: We are expecting this 6,800 in the worst of times. We do not expect the 6,800 to go up by a net gain of more than 300 a year, shall we say. But nonetheless I think the important thing, from our point of view, in planning is to get on with the completion of our 10-year program, cutting down on the types of institutions where we decide, for

example, that we do not need three new medium security institutions in Ontario, we can get along with two, and that sort of thing. But we have not undertaken to come out with a terribly strict, firm and arbitrary kind of a schedule that we are going to follow. I think we have reached the stage now where with the opening of the Archambault Institution in Laval we will have new accommodation for more than half of the inmates at St. Vincent de Paul and we will be able to put out of use all of the infamous bucket cells—bad institutions which people have been talking about getting rid of for a hundred years. Similarly, when the institution we are now just starting to construct at Millhaven outside Kingston—a maximum security institution, is completed, we will be able to take more than half of the population of Kingston Penitentiary.

It has been the departmental view and still is that these two old institutions, Kingston dating from 1835 and St. Vincent de Paul dating from 1873, should literally be torn down.

Mr. Howard (Skeena): They tried on a couple of occasions.

Mr. MacLeod: Perhaps some of the stone work should be left by way of a monument. But there should be a lot of trees, green grass, flower beds and things like that.

Mr. Howard (Skeena): There were a couple of attempts made in respect of each of them but they were not successful.

Mr. MacLeod: We try to do it more scientifically.

Mr. Howard (Skeena): You refer to the Archambault Institution at Laval. Is that the one close to St. Vincent de Paul that has the skylights and the catwalk over the top?

Mr. MacLeod: No, no, this is a new maximum security design with a maximum capacity, again, of 450 inmates. The one with the skylights is the special correctional unit which is still in the Laval area but closer to St. Vincent de Paul. The new Archambault Institution is 12 miles away.

• 2045

Mr. Howard (Skeena): Would it be possible to obtain the per capita cost of maintaining an inmate in the Matsqui Institution, the narcotic treatment centre? I realize that per capi-

ta cost is a difficult thing to define but I am thinking in terms of taking into the cost accounting of it, the salaries of the staff, the maintenance of the institution, repairs and the like, the upkeep of the inmates in terms of food and clothing and that sort of thing, and some sort of breakdown of the original capital cost of the institution, if you can relate that to a per capita cost, not only for Matsqui but for the other institutions as well. Do you have that material handy, or is it possible to get it without much difficulty?

Mr. MacLeod: Mr. Chairman, perhaps you would not mind if Mr. Benoit answered this question.

Mr. B. P. Benoit (Director, Financial Services, Canadian Penitentiary Service): Mr. Chairman, I think that in dealing with the cost of Matsqui or the per capita cost which we have now, one must keep in mind the ultimate capacity of this institution versus a building-up of population over the last two years. In 1966-67 our per capita cost for the Matsqui complex was \$13,000, but this was based upon a population there of 155. During 1967-68 our population rose to 237, and the per capita cost correspondingly has gone down to \$9,700. Based upon a capacity of some 400 to 450, the per capita cost should be—using constant dollars in relation to these costs—in the area of \$5,000.

Mr. Howard (Skeena): Could you tell us what is included in the per capita costing?

Mr. Benoit: This is the total operating cost—salaries, wages, light, heat, power, food, inmate remuneration. . .

Mr. Howard (Skeena): Staff salaries?

Mr. Benoit: All staff salaries. We have not been able, as yet, to refine it to such a degree although we can, starting this year, refine it.

As you know, at Matsqui we have two programs going on. There is a pilot treatment program under Dr. Craigen, as well as the normal institutional program. The pilot treatment program is a high concentration of highly qualified staff, and the per capita costs there are somewhat higher than they would be normally and they tend to increase. Up until the beginning of this year, 1968-69, we were not able to isolate these costs to any degree of accuracy, and I do not have the current costs with me. These would run, for that one unit because of this high incidence of salary costs, around \$10,000 per year.

Mr. Howard (Skeena): Then the per capita figures that you have given—\$13,000, \$9,700, and the like—do not reflect in any way the capital cost of the institution itself.

Mr. Benoit: No, they do not.

Mr. Howard (Skeena): In computing per capita costs of maintaining an inmate in an institution, do you compute that in, at any time?

Mr. Benoit: No. As you are aware, in the government system of keeping accounts. . .

Mr. Howard (Skeena): That is one thing I am not aware of.

Mr. Benoit: . . . it is not worked in. The capital is written off in the year in which the money is spent. We have had some negotiations with provinces about taking care of certain prisoners who are now in provincial institutions. This becomes a bone of contention. We had calculated in the capital cost, in trying to work out our per capita figures, but the provinces do not wish to accept these, or some of them do not. So, in government circles in the past there has not been a tendency to include capital as a part of the annual per capita cost. We have them and we are able to compute them, but in terms of any information that is distributed, they are not included.

● 2050

Mr. Howard (Skeena): Part of the question, too, Mr. Chairman, is related to other institutions—the per capita costs there as well. It may take up too much time of the Committee at this stage to read it into the record, but if the Committee considers it will take up too much time because of the number of institutions and if the information is available, Mr. Chairman, maybe it would be worthwhile to file it and have it attached to the Committee Proceedings as an information, report, or something of that sort.

The Chairman: Would you be able to provide that, Mr. Benoit?

Mr. Benoit: May I be informed as to exactly what you wish, Mr. Howard?

The Chairman: Perhaps you could be a little more explicit.

Mr. Howard (Skeena): Well, you have just now given us the per capita costs of maintaining an inmate in the Matsqui centre, for 1966 on a certain population, for 1967 on a

certain population, and for a population of from 400 to 450 a certain figure. Would it be possible to obtain similar information for the other institutions in the Canadian Penitentiary Service?

Mr. Benoit: Yes, we do have that information available. A question on this was asked in the House, to which we supplied the answer.

Mr. Howard (Skeena): Yes, I realize that, Mr. Chairman. But I was trying to determine what was reflected in the answer, what comprised it.

Mr. Benoit: It was exclusive of capital costs.

Mr. Howard (Skeena): Yes. Also, could I ask if it would be possible to obtain this information broken down by particular institutions, as distinct from the general figure that was given in the House. If this could be done by way of a paper presented to the Committee and attached to the Proceedings of the Committee, it may save a bit of time, unless the Committee wants it otherwise. This is all I was asking.

The Chairman: Mr. Benoit, do you understand the question, and are you able to provide the information?

Mr. Benoit: Yes, I think we can.

The Chairman: We will do it in that manner then, Mr. Howard.

Mr. Howard (Skeena): I do not want to stretch upon the time of the Committee members too much, but the matter of Matsqui has another aspect to it because of the peculiarity of the institution, namely that it is a narcotic treatment centre. The word "treatment" was used in two respects, both with the pilot treatment unit headed by Dr. Craigen who incidentally was before one of our parliamentary committees during the last session, and then with the general treatment program. I wonder whether it would be possible to get an indication of just what this general treatment program is, how it differs from the general treatment program in other institutions—if it does differ from that—and what takes place in the field of pilot treatment unit type of programs for the women inmates at Matsqui?

Mr. Hazen Smith (Director, Inmate Training, Canadian Penitentiary Service): Mr.

Chairman, the treatment program at Matsqui is one which is heavily oriented towards individual and group counselling for inmates. That is one of the main differences that we find in it from that in other institutions. The staff is very highly trained, and capable of conducting these group counselling sessions at this particular institution. The pilot treatment unit is a program that is operated in co-operation with the parole service and the penitentiary service. During the initial treatment in this unit the group counselling part of the program is emphasized, and when the inmate seems to be ready he is paroled by the Parole Board at a given period in the sentence. This probably is the main difference between the program in Matsqui and in other institutions.

Mr. Howard (Skeena): Do women inmates in Matsqui participate in this pilot treatment program, or in a pilot treatment program?

• 2055

Mr. Smith: Recently, plans have been inaugurated by Dr. Graigen to institute the same type of program in the women's unit as is presently operated in the pilot treatment unit in the men's side.

Mr. Howard (Skeena): With the same staff, or with a different staff?

Mr. Smith: It is under Dr. Craigen's direction. He will be in charge of the program in both the women's and the men's side. In the women's side, he will have a different staff—women counsellors, guidance officers, and so on—trained to perform the function that is being performed in the men's unit by male employees.

Mr. Howard (Skeena): If I may have one further question, Mr. Chairman, and if anyone objects to my taking up so much time please do not hesitate to holler; I can easily come back another time. Mr. Smith mentioned that the general program in Matsqui, as I understood his words, was heavily oriented to group counselling, group participation, individual guidance, and this sort of thing, and that the staff was particularly trained for this type of activity as distinct from the normal type of staff training, or whatever it is that takes place in other penitentiaries. Would it be possible to get a breakdown of the qualifications, or the professional status held, by the staff in the Matsqui institution who provide this specialized and heavily oriented training?

Mr. Smith: Yes.

Mr. Howard (Skeena): Not right now, but at some time I would appreciate this very much.

Mr. Smith: Very well, sir.

Mr. MacLeod: One of the points about this, what makes the ordinary staff member at Matsqui better equipped to carry on counselling of inmates, is the fact that before we ever went into operation the staffs themselves were subjected to hours of group counselling at the instance of a psychologist who himself had taken the full course in Chicago. This is the only one of our institutions where we have been able to do that so far, although the Special Correctional Unit in Quebec has done some. At Matsqui we have a full-time psychiatrist and a part-time psychiatrist—that is five half days a week—for 35 women and 180 men, plus psychologists and classification officers and the lot. We started out in Matsqui by saying this was an experiment. Nobody in the world knows yet how to “cure” drug addicts. We at least will know as a result of this in a couple of years time some of the things that will not work, if we do not know some of the things that will.

Mr. Howard (Skeena): This was the next thing I had in mind and yet I did not want to ask it because the program is too new, as far as I am concerned, to have any rationale as to whether what is taking place is effective or otherwise. Thank you, Mr. Chairman.

The Chairman: Mr. Chappell.

Mr. Chappell: Many of the questions I had in mind have already been covered, but I would like to go over this centre again. I understand the capacity is about 450?

Mr. MacLeod: That is the maximum capacity of our standard institutions.

Mr. Chappell: I am asking about the capacity of Matsqui.

Mr. MacLeod: Yes, 300 males and 150 females.

Mr. Chappell: Is the institution full?

Mr. MacLeod: No, there are 35 females at the moment and, I think, 180 males.

Mr. Chappell: That is 210.

Mr. MacLeod: That is right.

Mr. Chappell: What is the average length of stay, or are they all still there since the beginning?

Mr. MacLeod: No, large numbers of them have been released. Most of them go in for two or three years, and the Parole Board grants a large number of paroles to these people, as the Chairman of the Parole Board will explain.

Mr. Chappell: When they are released, are they released completely, or are they on some outclinic basis?

Mr. MacLeod: They are all on parole under supervision.

Mr. Chappell: Something like an outclinic basis where they have to keep returning.

Mr. MacLeod: They report to the office of whoever their supervisor is. I do not want to get into Mr. Street's role in this because he can tell you precisely what happens.

Mr. Chappell: What area is served by this particular institution?

Mr. MacLeod: All of British Columbia, but more particularly the lower mainland where the problem is more intense than elsewhere. It is estimated that there are 2,000 narcotic addicts in the lower mainland of British Columbia.

Mr. Chappell: How does one gain admission? Is it ever voluntary, or is it all referral by courts? Or can application be made by someone to have them committed?

Mr. MacLeod: It is always by conviction and sentence. Charges are laid by the police—

Mr. Chappell: All referred by courts?

Mr. MacLeod: That is right.

Mr. Chappell: There is no provision for someone in the family, or the family doctor, making application?

Mr. MacLeod: No, there is not, sir. There is a reason for that. If you would like me to take one minute I will tell you why.

Mr. Chappell: No; not for the moment, in any event. They are all committed as the result of crimes, so to speak?

Mr. MacLeod: They come from the crimes of possession of narcotics or of trafficking in narcotics; or crimes such as theft, or breaking and entering, where it is established to our satisfaction that the man is an addict.

Mr. Chappell: Yes; then perhaps you would give the answer you volunteered a moment ago. Why is it just this type rather than those on whose behalf the family, or the family doctor, has made an application, similar to what is done in most provinces for an alcoholic?

Mr. MacLeod: We considered this, and we felt that at this early stage we should not take too many chances with the program, which is experimental to start with.

Other jurisdictions in North America have tried out the idea of having voluntary patients as well as those convicted and committed by courts. It has not worked out very well.

Our feeling is that as long as the stigma of crime is connected with possession of, or trafficking in, narcotics it would be very difficult indeed to keep under the same roof a number of people, some of whom were considered to be criminals and the remainder not. That was our thinking on the subject.

Our thinking may not be the same five years from now; and we may discover that it is very possible to do that. But we have been in operation there for only two and a half years.

Mr. Chappell: You said you had a full-time psychiatrist and a part-time psychiatrist. How many psychologists are on staff?

Mr. MacLeod: I do not have that information immediately available, but I know we have at least two; I am sure of that. We have the number that are necessary. Psychologists in our service do not do much counselling; they do analyzing and testing and that sort of thing.

Mr. Chappell: What do you call the clinician who has the day-to-day contact with the patients?

Mr. MacLeod: We have classification officers and guidance officers. They do most of the group-therapy and the counselling procedure.

Mr. Chappell: Are they semi-professionally trained?

Mr. MacLeod: Yes; I would think so.

Mr. Smith, you really know more about this than I.

Mr. Smith: Yes; that is correct, sir. The minimum qualification for classification officers now is a B.A. degree. The majority of

the supervisors of classification in our 10 institutions have post-graduate degrees.

Mr. Chappell: How many of those are there?

Mr. Smith: How many with post-graduate training?

Mr. Chappell: With B.A. degree or above, other than the psychologists or the psychiatrists?

Mr. Smith: I do not have the exact number. We could obtain that information for you, sir, if you wish.

Mr. Chappell: I am interested to know the ratio between patients—as I suppose it is fair to call them in this case rather than prisoners—and those dispensing the cure, or the service? Is the ratio about 10 to 1, or would it be higher than that?

Mr. MacLeod: Across our service generally there is one penitentiary officer for every three inmates.

Mr. Chappell: Are you counting guards?

Mr. MacLeod: Yes. We call them correctional officers. That is what they are. They do more than just guard, in most cases. They do not form the great bulk of the people on the staff at Matsqui.

For example, if you want to know the ratio, Mr. Chairman, we have 35 women and we have 50-odd of a female staff; so we are well supplied with staff.

• 2105

Mr. Chappell: I take it that staff is for 150?

Mr. MacLeod: A few more would have to be added to cope with 150.

Mr. Chappell: I have just one further thought. This is new in Canada?

Mr. MacLeod: It is.

Mr. Chappell: Is it a completely new breakthrough, or are we following something that has been started in the United States or in England?

Mr. MacLeod: There are several United States counterparts. The famous one, or the one most often referred to, I guess, is Springfield, which is their federal Bureau of Prisons medical centre.

It is largely devoted to the problems of addiction, but there they are keeping volun-

tary and involuntary patients under the same roof; and are keeping males and females under the same roof, yet still trying to keep them segregated. Even by their own standards that has not been very successful.

Near Los Angeles, the Californians have tried something along the lines of our operation, but we feel that 800 to 1,200 patients are too many to have involved in one program. Those are two examples of operations that are like ours, but there is none that could be said to be the same as ours, or of which ours is an imitation.

Mr. Chappell: Are you familiar with the treatment yourself?

Mr. MacLeod: No more than I can be...

Mr. Chappell: I mean the theory of the treatment?

Mr. MacLeod: Oh, yes. In the broadest terms I suppose the only cure for the narcotic addict is the same as that for an alcoholic.

Mr. Chappell: That is what I wanted to ask you. Is it somewhat the same? I know that in Ontario there are two or three that are somewhat similar to that for the alcoholic.

Mr. MacLeod: Yes.

Mr. Chappell: Are you able to make any prognostication at all of what you expect the cure rate might be?

Mr. MacLeod: It varies. Here, again, I hope that Mr. Street, when he is here, will have statistics about what has happened to these people after they left us. They are under his supervision as Chairman of the National Parole Board.

Mr. Chappell: I appreciate that for a while yet, you will not know the number who relapse, but how many do you think, or hope, you are going to cure?

Mr. MacLeod: I think we would feel we were being highly successful if we had a 40 per cent cure rate.

Mr. Chappell: That is somewhat similar to alcoholics, too, is it not?

Mr. MacLeod: Yes; I think it is much the same.

Mr. Chappell: Thank you.

Mr. MacLeod: Referring to an earlier question, sir, you wished to know how many had been processed at Matsqui. Since we opened

there we have released 178 males and 44 females. There has been quite a high proportion of success in that group, but I do not think it is more than 40 per cent.

Mr. Chappell: Let me just ask one more question. Who gets them jobs when they get out? Do you have anything to do with that, or does some group take over?

Mr. MacLeod: That is a kind of mixed responsibility. We try to help through our classification department and through people in the community who, either individually or collectively, are interested in the inmates. The Parole Board and its officers try to find them employment.

After-care agencies such as the John Howard Society, the Elizabeth Fry Society and the Salvation Army—just about everybody who is concerned about the individual inmate—get into the act.

Mr. Chappell: Thank you.

Mr. Gibson: Have you any periodic liaison with the institution you mentioned in Springfield and other institutions in the United States at your level of government?

Mr. MacLeod: No, there is no continuing liaison. We talk with our American counterparts at the annual meeting of the American Correctional Association at which we spend four or five days discussing these things, but we do not have any established routine of informing them of what we are doing or of finding out from them what they are doing.

Mr. Gibson: I hope you will forgive a rather novel question. I have just returned from the United Nations and I am still full of it. Would there be any possibility in the future of setting up a world, or United Nations, correctional institute of some kind where all the countries of the world could pool their resources and medical knowledge and information and training systems? Were we to get together and promote this perhaps at some distant date in the future would we be turning our attention in the right direction?

Mr. MacLeod: I would think so. The problem of narcotic addiction is a universal one.

Mr. Gibson: I was thinking in terms of medical treatment. Perhaps we could get together with authorities in other jurisdictions. We have problems in getting doctors. I imagine you find it very difficult to get qualified men.

Mr. MacLeod: We have fully-qualified medical doctors at all of our institutions. None of our people suffers from lack of medical attention.

In relation to your question, however, the problem with United Nations conventions, as I have discovered, is that there are too many people trying to impress each other with what they are doing, when, in fact, many of them are not doing anything at all such as they say they are doing. You rarely get down to a real nuts-and-bolts discussion of the practical problems of dealing with addicts and treating them.

Mr. Gibson: Do you feel it would be preferable to have one of your officers interview his counterpart in Springfield rather than the doctors?

Mr. MacLeod: Yes. At the moment we are not lacking in new ideas at Matsqui. Indeed, we feel that it can go full stream ahead for another two-and-a-half years before we have to look around for some new ideas. But in due course a suggestion such as yours could certainly have beneficial results.

Mr. Gibson: Sir, is there much use of experimental drugs in these institutions?

Mr. MacLeod: As a matter of fact, in our penitentiaries we do not generally keep inmates under medication to keep them from becoming violent, or difficult. There are some jurisdictions in the world where that is done as a matter of course.

Medication is used at Matsqui to a greater extent than at any other of our institutions, but the extent of it I would not be competent to evaluate.

Mr. Gibson: You have demonstrated your competency by the thoroughness of your answers, sir. Thank you very much.

Mr. Brewin: Mr. MacLeod, I do not know whether or not this is the system that is applied at Matsqui, but I read the other day a very interesting book by an American doctor, whose name I have forgotten, entitled *Reality Therapy*. It seemed to be a very strong critique of the traditional methods of psychiatrists, and at least to my untrained and untutored mind, it seemed to hold out promise of a far greater rate of recovery of normal personality than do the more traditional methods? Is this the same sort of approach?

Mr. MacLeod: It is well known to our professionals, and that is exactly what it is.

The traditional way for a psychiatrist to treat his patient was to sit in a chair while the patient lay on a couch and revealed the story of his life.

My understanding of the reality theory is that this is not good enough, and that you really have to sit people down in small groups around a table and let them find out what the rest of the world is like and what other individuals are like and, happily, what they themselves are like.

Mr. Brewin: It is quite the reverse of normal psychiatry. It requires the involvement of some person with the individual. His analysis is that many people go wrong because for some reason or another nobody has been adequately involved with them.

I must say that on reading this book it struck me as having a new and very promising approach.

Mr. MacLeod: One of the real problems in group therapy, as I understand it, is that the therapist must be extremely well-trained and have a high degree of self-control. The discussions are such that he is likely to be tempted to blow his top, and if he does that then all kinds of fiery things can happen in a room with people sitting around like this.

Mr. Brewin: The purpose of this is to make the individual feel responsible for himself rather than explain to him that some awful thing that happened in his past makes him responsible.

Mr. MacLeod: That is right.

Mr. Brewin: And this is what you are trying to do?

Mr. MacLeod: Yes, but it does take a substantial amount of training of staff, because it is our understanding that an inadequately trained staff member can do him much more harm than good in a group therapy session.

• 2115

Mr. Brewin: Could this method that is applied at Matsqui, be extended to other institutions to people who are not obviously mentally wrong but who have done foolish things?

Mr. MacLeod: Yes, it can, and I would think the optimum staff in an institution would be a situation where every staff member is thoroughly qualified in this kind of therapeutic procedure.

Mr. Brewin: That brings me to another line of questioning. Other professions and occupations have increasingly found it necessary to have what I would call refresher courses. Is there a system whereby the correctional staff is being constantly upgraded, taking refresher courses so that its ability to handle the job is constantly being improved?

Mr. MacLeod: Yes, we are trying to use our staff colleges in that way for our non-professional employees. Here again we have been trying to catch up over the last two or three years, since we have had the physical capacity to train, with a lot of our staff members who have never had a course. They were hired 10 or 15 years ago, shall we say, and have never had any formal staff training. With our facilities we are trying to do both. We are trying to give them the training they have never had and we are also trying to bring others who have had training up to date.

Mr. Brewin: That brings me to another question. I recall—I think it was in the 40's—that there was the Archambault Commission. I recall that, because my former partner, Chief Justice McRuer devoted some time to that. Then it was followed in the 50's, I presume it was, by the Fauteux Committee. Have you anything that indicates whether the recommendations of these two commissions which are now pretty old have been carried out? You mentioned to Mr. Gilbert, or he mentioned, that some recommendation in a report on juvenile delinquency is still not being carried out. I wondered if you had anywhere, or you could refer us to, some sort of table showing which of the recommendations of these two rather distinguished commissions have been carried out and which have not.

Mr. MacLeod: Yes, we could provide that almost immediately, Mr. Chairman, because a question asked in the House every year or two for the last four or five years has been which of the 88 recommendations in the Archambault report have been implemented and of the 44 in the Fauteux report, how many have been implemented. Quite a substantial number of them have, of those that fall...

Mr. Brewin: Yes, I understand that quite a lot of them have, in fact, been carried out, but I think it would be interesting to this Committee to take a look at some of the ones that possibly have not been. It may be that as a matter of policy they have not been carried

out. I would not be so much interested in whether it was 44 out of 88, but in the listing of the recommendations—of course, we can get that from the Commission, but have you this information?

Mr. MacLeod: Yes, we will have that and we will leave it with the Clerk.

Mr. Brewin: I have just one other question. Of the 6,800 inmates you gave as the present figure, do you have figures to show how many are recidivists?

Mr. MacLeod: Yes, we do have that in the other table that unfortunately I do not have tonight. You hear it said that 80 per cent of the people who go to jail go back to jail, or who go to prison go back to prison, or who go to penitentiary go back to penitentiary. On the basis of admissions to our institutions in any given year, 40 per cent of the people we receive have been in penitentiary before. Forty per cent of those we receive have not been in penitentiary before but have been in a provincial prison before. And 20 per cent are first offenders.

Now, I do not think I am being terribly wrong arithmetically when I say that if you go for years with 60 per cent of the people you had before not coming back, your success rate, I suppose, is 60 per cent. In this country, once you have been to penitentiary and you come before the court again, you are not likely to get 6, 8 or 12 months; you are likely to go back to penitentiary the second or third time around.

• 2120

Mr. Brewin: Can you say whether this figure of success of 60 per cent, if we may call it that, is growing, or can you compare those...

Mr. MacLeod: Yes, I think so, perhaps only infinitesimally, but growing nonetheless, I think.

Mr. Brewin: You do not have any more specific details?

Mr. MacLeod: No; not until we get another year of these DBS statistics.

Mr. Brewin: It seems to me it would be a good indication, a good measuring stick of success.

Mr. MacLeod: Yes, and we propose to do it. As I say, it is only in this last year that we have been able to get in the Dominion Bureau

of Statistics a deck of cards, one for each of our inmates, that can be put through the machine and you get the answers out on tape at the other end. It is long overdue, but at least we have it now and we are going to be in a position to provide much more information.

Mr. Brewin: That is all, Mr. Chairman.

The Chairman: Thank you, Mr. Brewin.

Mr. MacGuigan: Mr. Chairman, I am interested in the theory of penology behind the buildings, the construction and present buildings, that are being used for confinement. Perhaps by way of background Mr. MacLeod could review the numbers of the various types of institutions and the direction in which we are now moving; that is, what you would expect the ratio to be, say, in five years.

Mr. MacLeod: I think if we look back 10 years we will find that the entire inmate population was confined in eight maximum security institutions, ranging in size from 600 to 1,300, all of them maximum security, as I said. Now we have our 6,800 inmates confined in 5 maximum security institutions, 10 medium security institutions and 9 or 10—9 I think it is—minimum security institutions.

The reason for this program, of course, is that it was self evident—at least to people in the penitentiary service—that after 90 years of keeping people locked up in maximum security with relatively little or no kind of inmate training program, we were not getting very far. There had been experiences of other countries which indicated that if you reduced the amount of security for the right kind of people you are much more likely to be able to get on with a more comprehensive training program, one calculated to change the attitude of the offender.

Of course, that is the prison administrator's eternal bugbear. How do you change the attitude of a man who has committed crimes and say he does not see any reason why his attitude should be changed, because he likes his attitude just the way it is. So, how to motivate the person who has been convicted by the courts to at the very least behave himself in accordance with generally accepted rules of conduct in the community is a very difficult job, indeed.

Mr. MacGuigan: What about the future? Are you moving towards more minimum security institutions and perhaps the retention

of only, say, one maximum security institution, or what?

Mr. MacLeod: No, I think we are always going to need one in each region. I think perhaps before you came, sir, that I mentioned the kinds of institutions we are going to have in each region. I think each region in Canada will have to have one maximum security institution, but I would be surprised if each region required more than one.

We want minimum security institutions to be more than what we have now, mainly where we keep people who are engaged in forestry or in farm work, and we want our minimum security institutions to be built along more permanent lines where there will be a full scale academic program.

Indeed, the whole tendency of the federal penitentiary service today is to get away from the hewing of wood and drawing of water kind of program and do something positive to raise the educational standard from grade 6 to grade 10 or 11 and we are doing this by way of programs of adult education that we have going now in most of our institutions.

• 2125

Mr. MacGuigan: I would certainly strongly approve of the direction of your theory, sir.

The Chairman: Mr. Gilbert?

Mr. Gilbert: Mr. Chairman, I would like to ask Mr. MacLeod certain questions with regard to the building program. You said that you have three types, the maximum, the medium and the minimum and that you are now putting up five new medium which really could at Matsqui there. You have put up five new ones at Springhill, Collins—

Mr. MacLeod: Cowansville.

Mr. Gilbert: Cowansville, Warkworth and Drumheller. Now, have you done any research into, or have you had any experience with the type of institution that permits the wife to visit the husband and remain there for the weekend, or for the husband to go home for the weekend?

Mr. MacLeod: We do not have any experience with the former, but we have quite a bit of experience with the latter, because rightly or wrongly—and my own feeling is rightly—we do not think the Canadian public is yet ready to accept the idea that wives and girl friends should come to the institution on Saturday afternoons where a domestic relationship can be resumed.

On the other hand, we know how valuable it is to have these people come out of institutions and go to a family setting where there is a wife and children, shall we say, and other relatives. Therefore, last year, of our 6,700 or 6,800 inmates more than 1,000 were permitted home leave for one reason or other, and this is leave for the most part without escort; the three day weekend pass sort of thing.

I think perhaps only one of the 1,000 did not come back when he was supposed to; I think there was no more than one. I think that is very good. It indicates a great loosening up of attitudes on the part of penitentiary officers, if you will, towards the significance of a penitentiary sentence.

There are a great many things that we can do to improve public attitudes in the hope that the offender's attitudes will be improved too. We do not yet think that the conjugal visit in the institution is the better way to do it. Wherever possible we prefer to get the man back to the community.

Mr. Gilbert: They have had an experience in Europe with regard to the wife visiting the husband in the institution. Has there been any evaluation of that experience, do you know?

Mr. MacLeod: We have not done any formal evaluation. We know it is done in the State of Mississippi, for example, and it is supposed to be done in Mexico. Scandinavian attitudes, I think, toward this sort of thing are quite different from Canadian attitudes and this is the great stumbling block.

Mr. Gilbert: You think we are about 25 years behind the times?

Mr. MacLeod: Whether we are behind or ahead, I do not know. I just know from my experience that you cannot take anyone else's system and just impose it here in Canada and hope to be successful.

Mr. Gilbert: Mr. Commissioner, I would like to direct other questions to you with regard to corporal punishment. Under the Code you have the whipping section, Section 641, with which you are probably familiar, and I understand there are two types of whipping, the lash and the broad strap. Could you tell me how many inmates received corporal punishment in the last three years?

• 2130

Mr. MacLeod: I have that information somewhere here. Corporal punishment as a sentence of an institutional Board of Discipline in our institutions was handed down

once this year between January 1 and the middle of October; 19 times in 1967; 32 times in 1966; 7 times in 1965; 26 times in 1964. Do you wish me to continue going back with these?

Mr. Gilbert: No, I think that is fine.

Mr. MacLeod: I would not want to mislead you. In 1963 there were 96 but that was the occasion when we had some quite serious disturbances at St. Vincent de Paul and at the British Columbia penitentiary which accounted for that. In the same period of time corporal punishment sentences were imposed as a court order, 8 times so far this year, from January to the middle of October; 5 in 1967; 3 in 1966; 3 in 1965; 22 in 1964; 9 in 1963. That is the situation.

As far as institutional corporal punishment is concerned, it cannot now be imposed in an institution without the specific approval of the Commissioner of Penitentiaries. Of course, we have very elaborate regulations governing the manner in which it is to be imposed. No more than ten officers can be present. The prison psychiatrist or medical doctor must be there; the warden or deputy warden must be there. The punishment can be stopped at any time by the doctor or the psychiatrist or the warden or deputy warden. Of course, the only problem with making rules about corporal punishment is that the more humane you try to make them, the less humane the operation looks in the end result. My own feeling is that the tendency is for it to go into disuse as a possible prison punishment, and, of course, when that happens then presumably the Regulations in the Act will reflect the practice.

Mr. Gilbert: In other words, you would not have any objection if I brought forth an amendment to repeal that particular section?

Mr. MacLeod: I would not, no. As a judicial punishment, it is remarkable that it is reserved under the Criminal Code for offences that involve the use of violence or the threat of violence by the offender. Our people seem to think that it may have a useful short-term benefit if it is imposed on an offender but ultimately, society reaps more violence from him than it inflicted upon him.

Mr. Gilbert: I wish to direct a question to Mr. Hazen Smith, with regard to his rehabilitation program.

The Commissioner has said that they have set up prison boarding houses, which in one

sense are called halfway houses, where the inmate finishes off his term and at the same time attempts to establish himself in society and get employment. What has been your experience in this field?

Mr. Smith: Mr. Chairman, the first house, St. Hubert Centre, was opened in Montreal in April of this year, and the second one, the Osborne Centre, was opened in Winnipeg this month. It is too early for an experience report from Winnipeg but in the Montreal Centre inmates invariably are finding employment during their first week at the Centre. They go out on their own and seek employment or they are referred by the Manpower representative who comes to the institution, or some of our own staff. It has been a very gratifying experience so far, and I am sure it provides a very important bridge to the inmate in his re-integration efforts.

Mr. Gilbert: Mr. Smith, I notice that you are doing this by use of the prison boarding house. Do not some jurisdictions send the person out directly from the institution and he reports back to the institution rather than the halfway house? Is there any intention by the Commissioner to develop that type of rehabilitation?

• 2135

Mr. Smith: I may say, sir, that in a number of our institutions in Canada at the present time inmates are leaving the institution in the morning, attending classes in the community, technical upgrading courses, academic and even university courses, and returning to the institution each evening. This has been going on. There are quite a number of them in different parts of Canada at the present time.

Mr. MacLeod: I might add this, Mr. Chairman: there is one administrative problem that occurs when you have someone coming out of a maximum security or a medium security institution, that is, there is always the problem of contraband—things being smuggled out and attempts at smuggling things in. We do not feel that it is a very happy situation, if you are trusting a man to go downtown to work at a job, that you should be searching him in the morning when he leaves and searching him again in the evening when he returns, because there are always a lot of inmate pressures brought to bear upon another inmate who has access in and out of an institution. That is why we do it from our minimum security institutions.

Mr. Gilbert: Mr. MacLeod, is the inmate permitted to visit his family when he is at that prison boarding house?

Mr. MacLeod: Oh, yes.

Mr. Gilbert: He is?

Mr. MacLeod: Oh, yes, he has a great deal of freedom. There have to be some rules, of course. There is a curfew but mostly it is a matter of him telling the Superintendent where he is planning to be.

Mr. Gilbert: What is the procedure with regard to the final day release? The obvious is the hand shake and a new suit and \$5 or \$10.

Mr. MacLeod: He has already got his new suit when he leaves the main institution and comes down to the boarding house. He has already got his issue of shaving equipment, suitcase, toilet articles, handkerchiefs, shirts, winter overcoat and all the rest. I have not watched the process take place, but I imagine it is done quite informally: one day he is there and the next day he is not there. We provide him with funds. We tried initially to issue meal tickets for meals at a nearby restaurant but that did not look very well because it appeared, once we started doing this, as we are putting an awful lot of trust in this man, a little bit ridiculous to be handing him three meal tickets a day. Now we provide money and he has to account for his money in a reasonable fashion. He has to feed himself. That is what is happening and it is working very well.

Mr. Gilbert: Many thanks, Mr. Commissioner.

The Chairman: Mr. Howard, did you have a question?

Mr. Howard (Skeena): Mr. Chairman, earlier—I think it was some conversation Mr. Brewin had—there was a reference to commitment of the individual for narcotic treatment—perhaps it was Mr. Gilbert who asked that—without the process of a court conviction. From memory, Part II of the Narcotic Control Act which was passed about 1960 had a provision in it to work out arrangements with the provinces because medical treatment is a matter which jurisdictionally comes within the hands of the provinces, and I gather that no such agreements have been worked out under that part.

Mr. MacLeod: No, I am quite confident that none has. Part II has never been brought into force.

Mr. Howard (Skeena): No. It would only be brought into force if there was an agreement between the provinces and the federal authorities about it. Maybe this is delving into the realm of ministerial responsibilities and authorities and maybe Mr. McIlraith, being relatively new in the Department, may not know of the previous discussions. Could we get an assessment or an indication of the reaction of provinces, particularly my own Province of British Columbia, because that is where Matsqui Narcotic Treatment Centre is, to the proposals in Part II, whether any attempts were made to work out an agreement or arrangement?

• 2140

Mr. MacLeod: It has not been an active issue. One of the problems, of course, from the federal government's point of view would be if this Part II were brought into force, shall we say relatively quickly, it would then involve something like 2,500 addicts in the country, all of whom would be subject within weeks or months to be committed for treatment. Out of that population, of 2,500 to 3,000 addicts, we only have at any given moment 335-odd serving terms in federal institutions. That is about 10 per cent. If instead of having to look after 10 per cent, we had to look after 90 per cent or 100 per cent, it could present quite a problem in terms of institutions.

Mr. Howard (Skeena): This is a thought we had when Part II came into effect and I only passed the comment that it might as well not be there for the value that it has had up until now or that it might have in the future, because this situation is still going to prevail, I presume. Anyway that is a speculative comment, not a question.

With respect to the book *Reality Therapy* which Mr. Brewin mentioned by Dr. Glasser, I think it was—

Mr. MacLeod: Glasser, yes.

Mr. Howard (Skeena):—I gather that what Dr. Glasser advances is somewhat similar to that which takes place in the pilot treatment unit at Matsqui, namely, an attempt to, as much as possible, simulate reality, the real situation outside the penitentiary walls, and get the individual to think in terms of his responsibility to himself and to others rather than the "selfishness" motive. The thought

occurred to me that if this is the case and if this is a valid approach to psychiatric or psychological treatment of narcotic addicts, might it not be much more valuable to remove the atmosphere of the penitentiary entirely and have the pilot treatment unit more in concert with reality than the simulated situation?

Mr. MacLeod: My problem is, I do not think reality means so much what the reality of life outside of the prison wires or prison fences or prison walls is like as the reality of what goes on in the individual's mind, based on the idea that all human beings are a lot of the time telling themselves little stories about what the truth is when actually they are telling themselves little lies. It is to get the inmate to recognize the real person inside his mind, and to accept that real person. I think that is the reality in reality therapy.

Mr. Howard (Skeena): Have you had discussions with the staff in the pilot treatment unit about this, or any other aspect?

Mr. MacLeod: No, I have not—only generally speaking. The high-powered staff—at least I think it is pretty high-powered by our traditional standards there—know what they are doing. They have formulated their program, it looks good to us and to our professional people at headquarters, so our tendency is to let them go and see what they can do.

Mr. Howard (Skeena): Have you visited the pilot treatment unit to any great extent to see what goes on?

Mr. MacLeod: Oh, yes. I go out there and spend a half a day, sometimes a full day, wandering around, poking around, talking to people, this sort of thing.

Mr. Howard (Skeena): Mr. Chairman, I have a number of other things. I notice Mr. Chappell had his hand up again and I do not want to intrude too much upon the time that other members may desire to use and, if I may, I will leave it at that and perhaps start on another tack about some other items, if I can get the opportunity again.

The Chairman: Thank you. Mr. Chappell.

Mr. Chappell: I have a very short question. It may be, Mr. Commissioner, that you are not the person to answer it. I know it is popular today to do away with harsh discipline but are you able to say if this use of the strap can and ever does speed the correction and thus shorten the period of confinement?

Mr. MacLeod: I would say it is quite likely to shorten the period of confinement by bringing about a temporary improvement in the attitude of the person who has suffered it. But my concern is that after the temporary improvement, in order to get over this difficult period in his life, there is apt to be a very serious deterioration in conduct later on, which in most cases will be used against society. There will be other victims.

Mr. Chappell: So you doubt whether there is any over-all gain or long-term gain. It may help the warden in his discipline but it may not help correctively.

● 2145

Mr. MacLeod: That is right. There is no doubt that if there is a somewhat serious disturbance going on in an institution that a little bit of selective paddling does a great deal to restore order in the institution, and I think as prison administrators one of our duties is to provide order in an institution.

Mr. Chappell: We all grew up with some degree of the philosophy that if you spared the rod you spoiled the child. Someone said these people are not children. Are many of them not really children in adult bodies?

Mr. MacLeod: The distinction I make here is that around home or in a boys' school or elsewhere, strangely enough, when you were chastised it was done with love. The chastisement was given by someone who loved you or had a high regard for you. It is not so when you get punished by whipping, which is imposed by a court, because the offender does not really think that the court loves him very much. He does not think that the warden in the institution that supervises it loves him very much. He does not think there is anybody in the whole scheme of things who loves him very much. Therefore it is not likely to have the same effect as paddling the child.

The Chairman: Are there any further questions?

Mr. Gilbert: Mr. Chairman, I would like to direct a question to the Commissioner. At the last session there was a standing committee on drugs, and if correctly interpreted the assessment in regard to punishment it was that if a person takes drugs and becomes connected with crime, either by way of a possession charge or an offence which is the result of his association with drugs, that the fellow may be sick and the approach of the

court should be to adjourn the hearing of the charge *sine die* and probably commit him to the institution at Matsqui or some other governmental institution in order to help him. Then, once he has broken the habit, he goes back and he faces the particular charge. What do you think of that approach? As you know, the minute a person is convicted he has a criminal record.

Mr. MacLeod: Yes. As a matter of principle, my feeling is that we should keep criminal records to a minimum and still maintain an orderly society. Certainly if society can help a man to stop using narcotics, and can achieve that objective without his gaining a criminal record, I would be all for it.

Mr. Gilbert: Would that apply to young students who are taking marijuana, Mr. MacLeod?

Mr. MacLeod: I do not have my mind made up on marijuana yet. I know it is a lot different from heroin, but whether it is so far different that it should not be treated the same way, I do not know. It is not a problem in our institutions as yet. As far as I know nobody has been trying to smuggle marijuana into the institutions, but out on the West Coast there are occasional efforts to smuggle heroin in.

Mr. Gilbert: Thank you, Mr. MacLeod.

The Chairman: Are there any further questions?

Mr. Howard (Skeena): I have a question, if I may, Mr. Chairman.

The Chairman: If possible I would like to adjourn by 10 o'clock, and if you wish you may ask a couple of questions.

Mr. Howard (Skeena): I will not prevent you from doing that.

I understand there is a chap in the B.C. penitentiary who on the 16th or 17th of this month "celebrated"—and I put quotation marks around that word because it is not quite the proper term—had then put in his thirtieth year solidly behind bars. Whether this is a fact or not, I do not know. However, I think some statistics about the length of time that people have spent in penitentiaries in a solid way—not as a sentence but actual time served—over 20 years, for instance, would have some meaning for us, especially in the light of what I gather is a more generous view of parole. I do not want any indication of the names of the individuals, or any-

thing of that sort, but if this information could be obtained I think it might be helpful.

• 2150

Mr. MacLeod: As a matter of interest, in British Columbia we now keep our old men at Mountain Prison, which was originally built in 1962 or 1963 to look after the 125 Sons of Freedom Doukhobors who were causing trouble. At present there are only seven of the Sons of Freedom Doukhobors left, and in British Columbia we use Mountain Prison as sort of an old men's home. They can live there and view this pastoral scene, work around in the garden and read a little. It is really not a bad life at all.

Mr. Howard (Skeena): I am not putting any age on you, but would you like to spend your time in viewing that pastoral scene?

Mr. MacLeod: There are days right now when I would not mind!

Mr. Howard (Skeena): But you would like to have some control over when you were going to leave. In any event, if you could get that information I think it might be helpful.

I think you mentioned in your opening remarks, Mr. MacLeod, that you considered 35 per cent of the population might make some attempt to escape, would escape or were considered to be dangerous. This group that are in the "considered to be dangerous" category some day or other, either by parole or by the expiration of their sentence, are going to be released.

Mr. MacLeod: That is right.

Mr. Howard (Skeena): Dangerous or not. What programs exist which try to lessen the so-called dangerous aspect of the individual?

Mr. MacLeod: Mr. Chairman, the point is not that these 35 per cent are identifiable individuals who will spend all of their prison terms in maximum security, they will work their way from maximum to medium, to minimum, to the prison boarding house and then to parole. You can put it another way. Of the 2,500 people that we receive every year from the courts we believe that around 35 per cent—probably not more, somewhat less, but around that number—will require maximum security for a time.

Mr. Howard (Skeena): This was not clear to me from your earlier remarks, and I just wanted to follow that up.

One other item, if I may, Mr. Chairman. This relates to something which, in a way, is rather sad. I do not want to mention the name of the individual because I do not really think that is of any value. It would only embarrass the individual. There was a chap who served some time in the St. Vincent de Paul Penitentiary who was a participant—perhaps not a full participant in that sense of the word—or in any event was accused of being a participant in the riot and fire that took place there in 1962, or thereabouts. As a consequence he was sentenced—I think he was charged with destruction of Crown property—to 14 years in addition to his other sentence. By the grace of the Crown this was subsequently reduced to seven years. He was then transferred to a less volatile situation at Kingston—at least, less volatile in terms of his psychological rapport with St. Vincent de Paul Penitentiary. He was released last summer and there was a fair amount of publicity, at least in the Ottawa papers, about his release and about statements he made concerning some of the conditions that existed at St. Vincent de Paul Penitentiary that he encountered and knew about. I gather he described these conditions somewhat graphically because of his way of describing things. Colonel Stone has some comments to make. He is the Deputy Commissioner, is he not?

Mr. MacLeod: That is right.

Mr. Howard (Skeena): Colonel Stone had some comments to make about this, which appeared in the July 4 edition of the *Ottawa Citizen*. I have the clipping here. He is reported as having said that the statements made by that individual to whom I referred were "a journey into sensationalism". That a thorough departmental investigation had been carried out and that the claims this gentleman had made were untrue. Would it be possible for us to have the results of that departmental investigation? What sort of investigation took place? This to me is a rather unique situation. Having visited St. Vincent de Paul Penitentiary along with my colleague Arnold Peters as well as Reid Scott subsequent to the fire and riot, and having talked with individuals who were actually beaten, kicked and molested by officials, staff and guards in the penitentiary following that riot, and after having talked with a number of both guards and inmates in the penitentiary, I believe, to say the least, there was a fair amount of good, honest comment on the part of this individual about the treatment he received in that insti-

tution. Some of this was also borne out in the evidence that was given at his trial and at the trial of others who were similarly charged with destroying government property. In the light of that it seems rather passing strange that the Deputy Commissioner would gloss it all over by calling it a "journey into sensationalism" and state that there was a thorough departmental investigation carried out and that the claims he made were found to be untrue.

• 2155

Mr. MacLeod: Probably what he was trying to say—whether it would make any difference or not in terms of the suitability of the comment—was that it was journalistic sensationalism. I think that is how he was describing it. When you have a disturbance of that nature in a prison, tensions are bound to run pretty high for a little while afterwards and a lot of things are unpredictable. Both staff and inmates do unpredictable things. However, certain inquiries were made into this as a result of some questions that were asked in the House of Commons. I think we can certainly provide a summing up of the situation, if the Committee wants that.

The Chairman: Yes, I think that would be very helpful, Commissioner.

Mr. MacLeod: Fine.

Mr. Howard (Skeena): I am interested in Colonel Stone's remark when he referred to the individual who made the statement that "His claims were found to be untrue". I take issue with Colonel Stone on that. It is just too bald and definite.

Mr. MacLeod: I was out of town at the time, but as I recall it he was very annoyed about being misquoted. Whether he was completely misquoted, substantially misquoted or in part misquoted, I do not know.

Mr. Howard (Skeena): Incidentally, I looked through the subsequent issues of the paper to see if there was any follow-up about this. The only thing I ran into was a comment by Mr. Diefenbaker, who also thought that Colonel Stone's remarks were out of tune with what should be the situation. I would certainly appreciate it if any light could be shed on this, and I would especially like to know whether or not a separate inquiry was held into the administration of the St. Vincent de Paul Penitentiary for the period of time prior to the riot taking place. Whether there

was or not I do not know, but as I recall the conversation that took place in the House about this, and the discussions that were had at St. Vincent de Paul Penitentiary when we visited there three different times, there was an enquiry under the authority of the Penitentiary Act into the riot but there was nothing with respect to the administration of the penitentiary prior to the riot or, in any event, into the administrative attitude during that period of time when certain things developed that led to the riot taking place. I think that all this would have been long forgotten and not dealt with if it had not been for Colonel Stone's statement which, in my mind anyway, revived it all.

Mr. MacLeod: I will give the Committee a statement on it, Mr. Chairman, showing what happened.

The Chairman: Yes, if that is agreeable to the Committee.

Are there any further questions? On behalf of the Committee, Mr. Commissioner, I would like to thank you for your very able presentation, and I also wish to thank Mr. Benoit and Mr. Hazen Smith.

If it is agreeable we will adjourn to the call of the Chair.

Meeting adjourned.

Tuesday, December 3, 1968

• 1111

The Chairman: Gentlemen, we now have a quorum. At our last meeting we did not have a quorum and I would like a motion that the Minutes of Proceedings and Evidence of November 25 be incorporated as part of the Committee's official deliberations.

Mr. Gibson: I so move.

Mr. Woolliams: Just before you put that motion, Mr. Chairman, I brought to your attention the fact that the notice for the Meeting came out on the day you called the Meeting, I believe on the Monday, and I think in future—this is no criticism of you because I know you have been very co-operative with all members—if you are going to call a Meeting you should try to give a little notice because all of us have other commitments and other obligations.

I do not know how many were present at that meeting and we will only know what proceedings took place by reading them, but I think that is one of the reasons why you did not have a full quorum on that occasion.

The Chairman: Yes, that is quite true, Mr. Woolliams; it was a Meeting at 8 o'clock Monday night.

Mr. Woolliams: When was it called?

The Chairman: The notice went out on November 21 for November 25.

Mr. Woolliams: It was not delivered until late Monday afternoon in my office.

The Chairman: I received my notice on Monday also. It is a difficult time to have a meeting and in future, of course, we will try to give as much advance notice as possible.

Mr. Woolliams: You see, a meeting was called for the previous Thursday and it was cancelled.

The Chairman: Yes, that is right. Thank you, Mr. Woolliams.

Motion agreed to.

Mr. Hogarth: Mr. Chairman, I had the misfortune to miss that meeting also and as the Minutes are not available could you possibly give just a brief resumé of what transpired at that meeting?

The Chairman: Well, it could not be a very brief one. We had the Commissioner of Penitentiaries and he answered questions. There were wide-ranging questions pertaining to the conduct of his department, but I do not think I would have time to go into what actually developed.

Mr. Hogarth: Very well, sir. When will we have these minutes?

The Chairman: It will be about a week, Mr. Hogarth.

Mr. MacGuigan: Mr. Chairman, may I again raise the point that we have to make a strong protest about this. It seems to me we should never have a subsequent meeting without having the Minutes of the previous meeting available. I say that not to suggest that we should delay our meetings, but that we should insist that the Minutes be available before a subsequent meeting takes place.

The Chairman: This is good in theory, but it is difficult so far as mechanics are concerned. It is difficult to get these Minutes processed but I hope, frankly, that this will not take place again and that we will always have a quorum. It always raises difficulties.

Mr. MacGuigan: It is not just a question of a quorum, Mr. Chairman. As I think I raised at a previous meeting, if a member happens to be late because of other commitments he does not know what has gone on and even before the next meeting he does not know and as evidence that this is not beyond the possibilities of man, the U.S. Congress always has these things available the next day. We have a translation problem but that should not take a week or 10 days to solve. I would again ask you to make strong representations on this matter to whoever is responsible for the inefficiency.

• 1115

The Chairman: Yes, I think the point is well taken and the Clerk informs me that great efforts are being made to attain this goal.

In this particular instance there was no quorum so they could not be printed, but generally speaking your point is that the Minutes of the previous meeting should be available before a meeting.

Mr. MacGuigan: Yes.

Mr. Brewin: Mr. Chairman, before you proceed might I raise a point and ask if something can be done about this? I believe we have referred to us the whole subject matter of wire tapping and this sort of invasion of privacy, and so on. I noticed that last night Lord Ritchie Calder spoke to the session of the Human Rights Conference and discussed that very subject in a 15-page typewritten lecture, perhaps including other subjects as well as wire tapping, and it seemed to me that it might be very useful material for this Committee. He was apparently an expert in the subject and I wondered if efforts could be made to secure the text of his remarks and perhaps make it available to the Committee if it seems worthwhile for subsequent study.

The Chairman: Yes, I think this is a point well taken. Of course, we are going to have many representations. Mr. Brewin, if you could give the Clerk the address and name of this particular gentleman I am sure we could...

Mr. Brewin: I presume he is still at the session. His name is Lord Ritchie Calder and it is the session at the National Human Rights Conferences. He is an Englishman and apparently a former political warfare expert. The Sessions are at the Chateau Laurier and I imagine he is there and the reason I raised it

now is that he may not be there very long. I presume he is just visiting for the time being.

The Chairman: Yes.

Mr. Brewin: It is reported in the *Globe & Mail* this morning on page 8.

The Chairman: If it is the wish of the Committee I will have the Clerk get in touch with him.

There was a certain document, the Syllabus of Training Courses Conducted by the RCM Police" requested and each of these manuals has been distributed to members of the Committee. At the end of the meeting on November 7, Item 20—Royal Canadian Mounted Police—Construction or Acquisition of Buildings, Works, Land and Equipment"—was discussed. I do not believe any more discussion is involved and I would ask whether Item 20 could carry.

Item 20 agreed to.

The Chairman: At the last meeting the Commissioner indicated that certain documents would be forthcoming for the benefit of the Committee. We now have these documents and I will let the Minister explain their nature.

Hon. G. J. McIlraith (Solicitor General of Canada): There were some questions asked at the last meeting for details of inmate population of the various institutions, distribution by institutions, age groups and recidivism, and then some other questions about men with records of over 20 years.

I have tables giving that information. There were some other bits of information asked for that we do not have available yet but I will bring them forward. In the meantime, this is ready to be provided now.

The Chairman: At the last meeting we were discussing the Correctional Services, Item 5. We now have at this meeting the Chairman of the National Parole Board, Mr. George Street. Mr. Street will make a Statement, then if there are any questions to be asked I am sure he will be very delighted to answer as fully and as well as he can. I would like to have Mr. Street make his presentation.

• 1120

Mr. T. G. Street, Q.C. (Chairman, National Parole Board): Thank you, Mr. Chairman. Gentlemen, as I think perhaps some of you

know, the Parole Board has been in operation for 9 years and 10 months and in the first 9 years and 10 months of our operation we have granted paroles to over 23,000 inmates in the various institutions in Canada; this is in federal prisons and provincial prisons.

During that time we have had to return to prison just over 2,500 of those 23,000, which means that on the average for the first nearly 10 years, 89 per cent of the persons released on parole completed their periods on parole without misbehaving or without committing any offences. Of the 2,500 or so that we did return, almost exactly half were returned because they committed another offence while on parole and the other half because they committed a minor or summary type of offence.

Since parole is being so successful, not only in rehabilitating people and keeping them under control in the community, I have been very anxious to increase the use of parole and in the last four years we have virtually doubled the number of paroles without any significant change in our success rate.

In 1964 we had only paroled 1,852 inmates. This was increased when we got more staff that we had not had for three years to 2,365 in 1965, to 2,500 in 1966 and over 3,000 last year, and it appears that for the current year we will parole somewhere in the neighborhood of 3,600, which is double the number we paroled four years ago. Also, as I say, despite this very substantial increase, our success rate still remains at 89 per cent and only changed by 1 per cent.

Along with that, of course, there has been a very substantial increase in the number of cases being reviewed by the Board. It increased from 9,964 to 11,867, an increase of almost 20 per cent, and the number of cases reviewed in the first 9 months of 1968 is 9,592 as compared to 8,597 for the same period in 1967, another increase of 12 per cent in one year.

The number of interviews by our parole officers, of course, increased very substantially too from 17,267 to 19,868 in the first 9 months, an increase again of 15 per cent.

Now, apart from the fact that I suggest parole has been an effective means of rehabilitating people, because if we can keep them out of prison and under control and at the same time help them with their problems and see that they do not return to crime, there is a reasonably good chance that they will not return to crime after their parole is finished.

Apart from that it has resulted in tremendous savings to the taxpayer because, as you know, it costs around \$4,900 to \$5,500 to keep a man in prison for one year. Besides this his family, if he has one, usually has to be supported at public expense and this could very well mean another \$2,000 a year. He can be maintained on parole for approximately one-tenth of this amount, and when he is on parole he is working, supporting his dependants, paying taxes and contributing to the economy of the country. Therefore, I suggest that it is not only an effective and successful way of rehabilitating prisoners, but it is done at a very substantial saving.

As you may have heard before, during the month of June of this year we conducted a survey of the earnings of parolees in Canada and in that month there were about 2,700 persons on parole. We were able to obtain results from only 2,284 of them but of this number 86 per cent were working. Their average earnings were \$295 a month and their gross earnings \$674,000 in one month.

Those men also supported in that month 2,472 dependants. This means that if we extend this over a period of 12 months, not even taking into consideration the 500 from whom we were not able to get results, these men who are on parole, under control and are being assisted with their problems in working, are earning about \$8 million a year.

I suggest as a rough calculation, based on an income of \$3,000 a year which is the average, that a single man pays \$227 in taxes. If we extend this to, say 2,500 men—I suggest this is a conservative estimate—these parolees are paying half a million dollars in income taxes alone, and this does not take into account all the other various taxes which they would have to pay.

• 1125

Now, because of the very substantial increase in the number of paroles, it has become almost impossible for the Parole Service properly to maintain its rate of granting paroles and at the same time provide adequate supervision because, as you can imagine, doubling the number of paroles in the last four years has caused a very substantial increase in the number of applicants for parole. I suggest that it would be good business for the Parole Board to be given more money so it can parole more people. We have demonstrated that we can parole more people successfully and we need more money in

order to sustain our present commitments, and not only just sustain our present commitments because unfortunately we have fallen behind because of the increase in applications, but in order to increase the use of parole in the future.

I suggest very strongly that the use of parole can and should be substantially increased because over 60 per cent of the inmates in all our prisons are not dangerous or vicious or violent, but they are convicted of offences such as breaking and entry, theft, theft and receiving, or fraud type of offences. These men are not, as I say, dangerous or vicious or violent and most of them could or should be released on parole.

I think it is especially important to remember that almost all of these men are going to come out of prison sooner or later anyway and it is much better, as we have demonstrated, to bring them out under control so that we can ensure to the best of our ability that they do not return to crime and, at the same time, assist them with problems they may have in coming out. Otherwise, they will come out at the end of their sentence in another few months or another year or so and then there is nothing to stop them from returning to crime except, of course, the vigilance of the police.

One of the other things I would like to mention is that I am sorry to say that in Canada we use imprisonment far, far too much. We use imprisonment in Canada more than any other country in the Western civilized world. However, I am glad to say that the use of imprisonment is decreasing in Canada. In 1962, 48 per cent of the people convicted of indictable offences were sent to prison but in 1966, the last year for which statistics are available, this had decreased to 40 per cent. Also our prison population is decreasing, as I think you perhaps know. It was 7,600 in our federal prisons four years ago and now it is slightly under 7,000 whereas it had been reasonably anticipated it would be 9,000 by now.

We spend \$65 million a year to keep 7,000 prisoners locked up but the Parole Board has to conduct a parole service not just for those 7,000 prisoners in federal prisons, but for 12,000 prisoners in provincial prisons, deal with 12,000 applications a year, grant somewhere around 3,500 to 4,000 paroles a year and maintain 2,700 people on parole at all times, and all on a budget of only about \$2 million.

I suggest very strongly to you, gentlemen, that in Canada there is not only too much use of imprisonment but that we should be doing everything we can to have more treatment and control in the community. As I have demonstrated to you, parole is nearly 90 per cent successful. The use of probation is over 80 per cent successful and most of these men are not dangerous and can be maintained under control in the community. They can be given the discipline and the training they apparently did not get before and, at the same time, with an 80 per cent success rate and with proper, adequate supervision and surveillance, I suggest that we can ensure that not many of them return to crime.

Most of them are going to come out of prison sooner or later anyway, and a greater use of probation would reduce the harmful effects of imprisonment because, despite the very good programs in our institutions, I suggest that imprisonment is not beneficial for most of the inmates.

• 1130

With the idea of having more men released on parole, and because we feel that if the men we select for parole need the guidance, counselling treatment, advice and surveillance that go with good parole supervision, the other men in prison who do not get parole—roughly two-thirds do not get parole—need the supervision even more. For this reason I think that we should have some sort of a mandatory supervision system for everybody who comes out of prison. As you know, this is being proposed in the present amendments to the Act. However this will take a long time to implement because we will need a great many more parole officers to provide adequate supervision for everybody coming out of prison. This would mean that they would serve their remission time on parole, whether they were granted parole or not, or under some form of supervision—we would not call it parole—in the same manner that parolees do. I think it is important to remember also that if a man gets a parole he is eligible for it after serving one-third of his sentence. If he does not get parole he will be released from the federal prison after serving only two-thirds of his sentence, but if he gets a parole at anytime he must serve his statutory remission time on parole, which means he is under control and subject to supervision—and I suggest the public is much better protected for a much longer period than it would be if he simply finished his sentence in jail and then was released. With this idea in mind we introduced what we call minimum

parole—a means by which a prisoner even though he did not get parole in the regular course of our selection could be given one month off his sentence for each year of his sentence. This means that on a two-year sentence, instead of getting out in 16 months and 10 days he could get out in 14 months and 10 days; he would get two months off his sentence but he would have to be on parole for not just that two months but for his statutory remission time, which is six months or one-quarter of his sentence. This is in effect trading eight months' supervision outside for two months inside. I suggest that the public is much better protected by this means—and this is only applicable to those who are not dangerous anyway. But if the persons who are not dangerous need to be under supervision, I suggest the persons who are potentially dangerous or who have a propensity for crimes of violence need the supervision even more.

With that idea we started minimum parole. The results, roughly, are that we have paroled somewhere over a thousand in four years and have had a failure rate of nearly 30 per cent. That is included in our general average statistics although it really should not be. These men are not given parole automatically but they get it more easily than otherwise. Despite the fact the failure rate is high, the 30 per cent of the 1,000 would have come out of prison anyway. However, 70 per cent of them did complete their eight months minimum time on parole without causing any trouble, and this is one of the reasons that I think we should have a system of mandatory supervision for all persons coming out.

As I said, if we are able to get more money and engage more parole officers, we will be able to increase the use of parole, which is not only effective but will result in more substantial savings because most of these parolees are working.

I think that is all I want to say right now, Mr. Chairman.

The Chairman: Thank you very much, Mr. Street, are there any questions?

Mr. Gibson: Mr. Street, I am curious to know about some of the hardened criminals whose names you frequently see on the dockets of Magistrate's Court. You see Court records three or four pages long of breaking and entering and theft, burglary and robbery. From reading these records no effort appears to have been taken to either commit these

hardened individuals as habitual criminals or to do something other than release them after, in many cases, a rather short sentence. Are these the bulk of the 30 per cent that you have just referred to, sir?

• 1135

Mr. Street: Yes, I think they are. There are a lot of things to be said about that. Despite the fact that we in Canada put too many people in prison, 90 per cent of sentences for all people are less than two years. But half of the indictable offences in Canada—I am only thinking about indictable offences—are committed by one-quarter of the criminals and this one-quarter, which is about 10,000 people or more, in each year have three or more previous convictions. Now I do not like the use of imprisonment if it can be avoided, but I do suggest that that 23 per cent should be given longer sentences and that more use should be made of the habitual criminal provisions of the Criminal Code. I will give you exact statistics. In 1966, 45,670 persons in Canada were charged with or convicted of 79,865 indictable offences. Of the 45,000, 10,566 or 23.1 per cent had three or more previous convictions and they committed 37,770 of the 79,000 odd indictable offences—in other words 47 per cent of the crime was committed by 23 per cent of the criminals. Those are the men I suggest that should have longer sentences.

We have not made very consistent use of the habitual criminal provisions of the Criminal Code.

Mr. Gibson: Are those provisions not very very difficult to bring in?

Mr. Street: They are.

Mr. Gibson: Has it not got to the point where it is virtually impossible, because of paper work and technicalities—and I am not critical of any one individual or one area, to commit these hardened criminals?

Mr. Street: Stewart McMorison does not find it is impossible in British Columbia—he manages to do it.

Mr. Gibson: Would you welcome efforts by Parliament to find a better system?

Mr. Street: I certainly would. I would almost be willing to say that automatically on the fourth offence the man should get the maximum sentence.

To give you some indication of what we can do with habitual criminals, there have only been 141 persons convicted as habitual criminals in the history of Canada since that law was passed about 16 years ago. Those men now know that they are facing a life sentence, they know that the only way they are going to get out of prison is by parole, and the only way they are going to get parole is by giving some indication that they intend to reform. Because most of them happen to be in British Columbia, we have a special project for them there. Of the 141, we have released on parole 71. But those 71 persons who were released knew they had to reform in order to get parole, and they also knew that if they misbehaved that they would be returned to prison, which is a strong deterrent against their returning to crime. Of the 71—and we have to exercise very tight control over them—we have had to return to prison 19. We still have 51 habitual criminals on parole in Canada.

Mr. Gibson: Thank you, sir.

The Chairman: Because we have a good number out at this meeting I would ask that members restrict their questions to four or five minutes so that each gets a chance to question.

Mr. Gilbert: Mr. Chairman, I would like to ask Mr. Street about the composition of the Parole Board. How many men have you on the Parole Board and what are their background, Mr. Street?

Mr. Street: At present the Board is composed of five members. As you know, I am a lawyer. I was a magistrate for 11 years and a Deputy Judge of the Juvenile and Family Court for four or five years. Mr. Edmison, who is also a lawyer, was Executive Director of the John Howard Society in Toronto. Miss Mary Louise Lynch is a lawyer from Saint John, New Brunswick. She has no particular previous experience in the correctional field but she has been on the Board about eight years. Mr. Tremblay is another member. He is from Quebec and was our Regional Representative there. He has training in law but he also has his Masters Degree in social work. The other member who, unfortunately, just died a few months ago, was Mr. Dion from Quebec. He was a lawyer and a Crown Attorney.

Mr. Gilbert: So that you have four lawyers and one social worker.

Mr. Street: That is true.

Mr. Gilbert: Do you think that that type of composition is a good one for a Parole Board?

Mr. Street: No. I would think it would be a good idea to have some other disciplines represented on the Board.

Mr. Gilbert: I will now direct myself into the second area, Mr. Street, the decentralization of the Parole Board.

You have indicated that you have a heavy workload. What do you think of the possibility of decentralizing the Parole Board and having it operate in different regions of the country?

Mr. Street: Well there is a good deal to be said for that. The thinking of the Committee of Mr. Justice Fauteux, who recommended the formation of the Board, was that there should be one national parole board so, that we would have one parole policy or one parole system for all across Canada. I think this is the reason, and I think it has a good deal of merit. We are able to do it, although we have to do it by sitting here in Ottawa and having the inmates interviewed by representatives in the field. But if our Board is increased, we do propose to start sending panels of members out to hold hearings in the various institutions across the country. If we get more members we could do that. That would help overcome one of the things that you apparently have in mind—getting more people in various parts of the country who would provide the opportunity for parole hearings. I hesitate to recommend that there should be too many local boards because if you had four or five different local boards we would have four or five different parole systems and the policy, philosophy and procedure is bound to vary from one board to another. Perhaps this is something in between that. We might have a local member in a certain area and then send out panels. In this way we would have the benefit of the local man on the spot as well as the members from headquarters. But even that would create difficulties. In any event I would like to try a system of sending two members out from headquarters to all federal institutions, and see how that works.

• 1140

Mr. Gilbert: One short question, Mr. Chairman, if I may.

Have you had any suggestion with regard to men in minimum security institutions

being placed in projects such as Panarctic. What relationship have you with the Manpower Department? I understand that many parolees are anxious not to return to the place where they committed the offence—they feel they should be given an opportunity to obtain employment some distance away so that they can acquire a stake and rehabilitate or re-establish themselves in other parts of the country. It seems to me that it might be wise if the Parole Board had some contact, or liaison with the Manpower Division so whereby these men could be placed in such positions.

Mr. Street: I was very much in favour of that idea because quite often if a man is working in a remote area in the country or up north, as you say, he would be perfectly safe—he could not really get in trouble even if he wanted to. I would be very much in favour of that idea, subject of course to our being able to find enough prisoners who could do the kind of work they wanted. There are not very many tradesmen in penitentiaries. But, subject to that difficulty, I would like to do it. Now I am going to contact the Manpower organization to see if they have any need for men in areas like that. This was brought to my attention by a radio commentator in Toronto who wants me to do a program with him on it, and I was going to check it out. Up until now the extent of the contact that we have had with Manpower is that a committee ensures that people coming out of prison are being given the training that they need in order to supply the labour market. We have not checked into this idea of trying to send 50 men to some project in the Arctic, although I would be glad to do it and I think it has a good deal of merit.

Mr. Gilbert: I suppose these people would be entitled to mobility allowances and so forth. I am very happy to hear that this approach is being pursued, Mr. Street, and I hope that we meet with success.

Thank you, Mr. Chairman.

The Chairman: Mr. Woolliams, would you proceed now.

Mr. Woolliams: Mr. Street, I would like to ask a few questions in reference to release of prisoners who in the past have been charged either with capital murder or non-capital murder. Now when they are released are they first released on parole or under a system where they enjoy permanent freedom? The reason I ask the question is that there is an

apparent increase now in alleged murder charges.

Mr. Street: Mr. Woolliams, whenever, a man serves a long sentence in prison nobody ever releases him without what we call a program of gradual release, because it is almost impossible to keep a man locked up in prison for ten years and then just open the door and let him go. He does not even know what a traffic light is, or how to make a telephone call, and things like that. They have a system of gradual release by which the man is taken out a few days at a time, a few hours each day, and so on, to become accustomed to life on the outside.

If he were on parole he would go through a program of gradual release and we would watch his conduct to see how he got along; and if he appeared to be all right we would then release him on parole, but again under adequate supervision? Is that what you mean?

• 1145

Mr. Woolliams: Yes. When a person charged with non-capital murder today is given life what is the average maximum time that he spends in a penitentiary?

Mr. Street: As you know, he must spend at least 10 years. I am not sure if I have the average sentences. The last time I had occasion to examine this it worked out that about 14 years was the average of those who had been released. But at that time we had authority to release them at any time; they did not have to stay their 10 years, and some who were rather exceptional cases were released at six and seven. Now nobody imprisoned on a charge of capital or non-capital murder, or with a mandatory life sentence, can be released until he has served at least 10 years; therefore, the average has to be at least much higher than that.

Mr. Woolliams: Has any change been made in the administrative interpretation of "life imprisonment" in the case of those people who are now found guilty of what originally was the crime of murder, or capital murder? Particularly since the abolition of capital punishment has there been any change in the interpretation of what "life" means? What is the general policy relative to the term in custody for men or women who have been convicted of that type of crime?

Mr. Street: No one, especially on a life sentence, is ever released except after very

careful investigation and assessment, and unless it appears to us to be quite reasonably safe and that he will not likely commit any offence again, especially an offence of violence.

As I say, they have to serve at least 10 years if it is a minimum life sentence.

The only change has been that as a result of this change, by which they are required to serve 10 years, only five persons out of 15 have been released since the time we required the approval of Cabinet to release them.

He has to serve 10 years. The Board has to recommend it to the Cabinet and the Governor in Council has to approve it.

Is that what you mean, sir?

Mr. Woolliams: Yes. Of the persons who have been released prior, or subsequent, to the abolition of capital punishment how many have again committed the offence either of capital or non-capital murder in Canada?

Mr. Street: It happened once in history, in 1944. A man released on a charge of murder committed murder again and was executed. That is the only time that happened in our history. And of those charged with murder and non-capital murder whom we have paroled, none has committed that offence again, or any offence involving violence.

Mr. Woolliams: How many men or women who have been charged with capital or non-capital murder are now enjoying freedom from custody?

Mr. Street: Ninety-one; that goes back to 1920, though.

Mr. Woolliams: The record has been pretty good except for that case you mentioned?

Mr. Street: Of the 119 released on parole in the last 48 years 11 have been returned to prison.

Mr. Woolliams: And for offences, of course, of a lesser nature?

Mr. Street: Fraud, robbery with violence, obstructing a police officer, drunk and disorderly and breach of parole conditions were the offences for which we have revoked paroles since 1959.

I do not have information on the 30 years before that.

Mr. Woolliams: If I correctly understand your answer, the average time period that these men spend is 14 years; is that correct?

Mr. Street: I think that would be correct.

Mr. Woolliams: Those who have been given life.

Mr. Street: That is as it was before; and it would not be any less than that, because at that time we had paroled a few in seven years, which would have affected the average. Now that cannot be.

Do you want some further information about that, Mr. Woolliams?

• 1150

Mr. Woolliams: Yes, if you have it.

Mr. Street: For instance, just glancing at our annual report of statistics for 1967, I will take the year 1963 and read across columns for men released on the charge of murder: 24.7 years, 9.9, 8.1, 7.1, 7.3, 7.3, and so on. As I say, that can no longer happen.

Then we have 10.3, 12.2, and a couple of seven and seven and a half years. That is in the western part of the country.

To take Ontario; 14, 11, 10, 12.2 and 9.8. To get this exact I would have to have a special study done. On the last occasion it was 14. I do not think it could be any less.

Mr. Woolliams: It may be a little early to ask this question, but has there been any increase in the charges of non-capital or capital murder for the exception relative to police officers, and so on, since the abolition of capital punishment? It may be a little early to have the statistics.

Mr. Street: I think it is. The statistics are rather unusual because those issued by the Dominion Bureau of Statistics indicate that in 1967, 281 deaths were reported. Only 103 were sent to trial, or got past their preliminary hearing. Of the 103 sent to trial 10 were acquitted, and only 70 were convicted of capital or non-capital murder or manslaughter. There are 23 pending, about whom we do not know. Of the 70 convicted out of the 103 only 23 were convicted of capital or non-capital murder and the other 47 or so were convicted of manslaughter or less; which left us with 23 persons who will have to serve a minimum of 10 years.

Mr. Woolliams: Since the abolition of capital punishment has there been any conviction

under the exception of the killing of a police officer? I believe one charge is now pending in the Peace River area of northern Alberta, but have there been any convictions to date?

Mr. Street: Has anyone been convicted of killing a police officer?

Mr. Woolliams: Yes.

Mr. Street: I do not know, Mr. Woolliams. We do not have occasion to know until after they are convicted. I only know of the case you are probably referring to, in which I understand the man is charged with that. I do not know whether or not he is convicted. We would not know until after he is convicted.

Mr. Woolliams: But your statistics show that to date no convictions have been brought to the knowledge of your Board?

Mr. Street: No, there have not been.

Mr. Woolliams: To change the subject for a moment, have any of the provinces suggested that where persons get a sentence of less than two years and their confinement really falls under provincial jurisdiction, they look after their own parole?

Mr. Street: Has there been any suggestion from the provinces?

Mr. Woolliams: Yes.

Mr. Street: That they should?

Mr. Woolliams: Yes.

Mr. Street: Yes. As you know, Ontario has a parole board which deals with the indefinite, or indeterminate, part of a definite indefinite sentence. Up until two or three years ago they were very anxious that we take over their parole board and to abolish theirs.

British Columbia has the same thing, on a more limited scale, for a younger type of inmate. British Columbia has not said anything one way or the other.

Ontario, I believe, is now considering the possibility of asking to do parole for all their prisons, but I am not so sure they will still want to do it now that their desired amendments to the Prisons and Reformatories Act are being proposed; that is, that they will not be obliged to keep the prisoner for any longer than two years. Previous to that a man could get two years less a day definite and two years less a day indeterminate, and this rather upset their system. Now that that objection

is overcome they may not take the same position. That was the main reason behind it.

Mr. Woolliams: I was thinking of the recommendation appearing in the newspapers today or yesterday—it may not have yet come to your desk—that a commission or a committee be set up in the province of Alberta on this point, and that because of the tremendous amount of work that your Board has to do, and probably on more serious offences, the provinces take over that jurisdiction in relation to those prisoners who have been sentenced to a period less than two years.

• 1155

Mr. Street: I do not know that that report has yet been made official but I understand that one of the suggestions or recommendations in it is that the province of Alberta might have their own parole system for those in their provincial prisons.

Mr. Woolliams: This may not be a fair question, but what do you think of that system? Do you feel it would be more efficient to have these offences dealt with by one central body, or by the provinces?

Mr. Street: I do think it is more efficient. We are able to do it now even just by operating in headquarters. But, as I said, we hope to increase the number of members of the Board.

The bill proposes that there be an increase, not only to deal with the extra work load of the Board but also so that we can send panels of at least two members out to the various provinces and various parts of the country. I think that would be the most desirable system.

Mr. Woolliams: I agree with you. Thank you very much.

Mr. Street: I have no particular objection to the provinces doing this, but as a citizen, not as a member of the National Parole Board, I do not like to see 10 different parole systems in Canada. There ought to be one, and this government ought to be concerned with how it operates. This is the government for the whole of Canada.

If you have 10 different systems they are bound to vary widely, as do the correctional systems in the various provinces now, from very good to very bad.

Mr. Woolliams: Thank you very much, Mr. Street. I agree with your statement in that regard.

The Chairman: Mr. Hogarth?

Mr. Hogarth: Mr. Street, having been involved in the prosecution and defence of several persons under the habitual criminal proceedings of the Criminal Code I am somewhat alarmed at your suggestion that on the fourth offence automatic proceedings should issue, or that the man be automatically committed as an habitual criminal.

Would you elaborate on that? Surely there must be some qualification for the man who goes on a forgery spree, forges five cheques and gets a count on each, or, in various police courts, is convicted. Lo and behold, on the fourth offence he finds himself to be a habitual criminal. Surely you could not go that far, could you?

Mr. Street: I must admit that most of my remarks related to those who are a menace to society, or who are addicted to crimes of violence, or serious property crimes.

I gather you are referring to what one might call the nuisance type of offender. I am not so much concerned with them, although they are a bit of a nuisance. They do not really cause anybody any harm or injury.

I am concerned, however, with the man who is a menace to society and is liable to inflict harm or injury to people. I think he ought to be kept out of society for as long as is necessary.

Mr. Hogarth: You would qualify your remarks to the extent that you do not mean that merely on the fourth offence a man would be a habitual criminal.

Mr. Street: I mean in four separate, distinct crimes since attaining the age of 18, which is somewhat as it is now.

Mr. Hogarth: That is exactly what the criterion is now, is it not?

Mr. Street: That is right.

Mr. Hogarth: First of all, there is the commission of an indictable offence, and then there is the commission of three other indictable offences for which he could be punished for a period of five years; that they have occurred since he was the age of 18; that he is persistently leading a criminal life; and finally that it is expedient for the protection

of the public that he be given preventive detention.

Have you any observations to make on these criteria? Is there anything wrong with them?

Mr. Street: No.

Mr. Hogarth: You are satisfied with the existing substantive criteria?

Mr. Street: Yes. It is just that I think that all laws should be uniformly administered and applied. It is hardly fair only to have them administered in one part of the country.

Mr. Hogarth: That, of course, arises out of the attitudes of the various attorneys general, does it not?

Mr. Street: Yes, it does. However, to answer the first part of your question, of the 74 habitual criminals that we released, these obviously were the better risks or we would not have released them. Of the 74 people, 20 were convicted of breaking and entering, 7 of theft and possession, 2 of robbery with violence, 4 of armed robbery, 37 of offences related to drugs and only 4 of forgery and false pretenses. I do not think very many—

Mr. Hogarth: One of the big problems with habitual criminals is the fact that many of them are also addicted to drugs, is that not so?

Mr. Street: That is right. Of the 75 originally released, 37 were convicted of drug offences. Of the 37 convicted of drug offences, 23 were addicts, 5 of the offenders were violators, and none of the non-addict drug offenders were violators.

Mr. Hogarth: When does the parole for a habitual criminal end?

• 1200

Mr. Street: When he dies.

Mr. Hogarth: Yes.

Mr. Street: However, we are proposing in the Act that the Board should be given power to release a man from parole. What we do in practice now with a man serving a life sentence is after he has been in five, seven or ten years and it is quite obvious he is completely reformed and rehabilitated and is not causing any trouble we release him of all those terms and restrictions, that would gradually have been released in the interval, to reporting to

the police once or twice a year instead of every month, and so on.

Mr. Hogarth: Would you advocate the system of indefinite parole for drug addicts so that they could be controlled?

Mr. Street: Yes.

Mr. Hogarth: I now want to speak to you for a moment about dangerous sexual offenders. How many dangerous sexual offenders are presently confined in the prisons of Canada?

Mr. Street: There have been 72 offenders convicted but one died in custody, making it 71. Two are in mental hospital and seven are on parole, so 63 are confined.

Mr. Hogarth: The parole facilities with regard to dangerous sexual offenders have apparently been exercised somewhat less than they have in the case of habitual criminals. Is that correct?

Mr. Street: Yes.

Mr. Hogarth: Do you know if dangerous sexual offenders are receiving any program of psychotherapy?

Mr. Street: Yes.

Mr. Hogarth: Do you suggest there should be a special institution for those people within the penal service?

Mr. Street: Yes. I would be inclined to think that would be a good idea. They get treatment somewhere or another now. For instance, they may be in a British Columbia penitentiary or some other place. However, if we are considering them for parole, then they not only have to be treated there but we usually send them to some mental hospital for a few months to get a case conference, a check-up, an observation, and so on. We always do that before they are considered for release.

Mr. Hogarth: Along that same line, I understand the federal government utilizes the facilities of the provincial government mental hospitals for the criminally insane. Is that correct?

Mr. Street: Yes, except they do not like that word.

Mr. Hogarth: Be that as it may, that is the terminology I am used to. Do you suggest that there be separate institutions for the crimi-

nally insane conducted in conjunction with the Penitentiary Service and the federal government?

Mr. Street: Yes. I think that would be a good idea. It is subject to this, though, that if a person is found not guilty because of insanity, as you know he is held at the pleasure of the lieutenant governor, which means that you may have ten different pleasures of ten different lieutenant governors which are exercised in a different way. In the past this has not been very adequately attended to. I know of the case of a 22 year old, who was kept in a cell that would be a disgrace to a federal prison.

Mr. Hogarth: You are suggesting they should go further in these special verdicts, and that a person charged and found unfit to stand trial should also be put into a special institution. Is that correct?

Mr. Street: I think that would be a good idea, but I do not know whether you could afford one for each province or not. I expect you do not have enough of them. For instance, they do not have any difficulty in Penetanguishene, which is a pretty good one. Perhaps they use drugs a good deal to keep them tranquillized, but they do not have any trouble there.

Mr. Hogarth: Are you aware of the existence of any research program in Canada into the phenomena of the psychopathic personality?

Mr. Street: We have a research program in British Columbia which deals with dangerous sexual offenders. I received an interim report yesterday from Dr. Marcus on it, but this is the only one I know of. As you know, the term "psychopath" is a rather wide, general, vague term and psychiatrists do not like to use it.

Mr. Hogarth: I appreciate that, but is it not your experience that this type of personality, the psychopath or the sociopath—and they are sometimes intermixed—has now been pretty well identified?

Mr. Street: As you know, I am a lawyer and not a psychiatrist and my impression is that this is a wastebasket category. They are inclined to use that term for everybody they cannot classify. I am not aware of any more scientific method of classifying what we call psychopaths than we had previously. I think

the best definition of a psychopath is a rebel without a cause.

Mr. Hogarth: In any event, there is no research program into this type of personality within our penal system?

Mr. Street: I do not know of one, except the one I mentioned.

Mr. Hogarth: On the dangerous sexual offenders. I have nothing further.

The Chairman: Thank you. Mr. MacGuigan?

Mr. MacGuigan: Mr. Chairman, I am interested in the 10 per cent of paroles that do not work out successfully. I wonder what Mr. Street's analysis of this group would be as to why they failed.

• 1205

Mr. Street: Roughly half of them failed because they did not abide by the terms of the parole conditions or they did not work when they were supposed to, they left the area without permission or they committed a minor offence or drank when they were not supposed to drink. The other half committed indictable offences. It would be rather alarming if you had a parole system that did not have some failures. That would mean you were not paroling enough. Actually I think our failure rate is rather low. I am a little bit ashamed of it because I think we should be paroling more people. However, we do parole about 43 per cent. I can give you some of the reasons they failed, but I do not think I can give you any more of an exact analysis than that.

Mr. MacGuigan: I think the matter is rather important in that I think in your granting of paroles it can be a guide to you as to which types are more likely to fail.

Mr. Street: We know that.

Mr. MacGuigan: You know that already.

Mr. Street: Yes.

Mr. MacGuigan: Perhaps you could enlighten me on that in a moment in a general way. I also wanted to get to the question of the terms of parole and how restrictive they are. Is it the committing of minor infringements that turn these paroles into failures or would they be fairly substantial breaches?

Mr. Street: They would be fairly substantial ones. The terms of the parole agreement

are fairly stringent. I have a copy of the parole agreement here if you would like to see it.

Mr. MacGuigan: I would be pleased to have that.

Mr. Street: He has to stay in the area, he cannot move away from the area without permission, he must accept supervision and carry out the advice of his supervisor, he must work, he must endeavour to maintain steady employment and, through his supervisor, report to the regional representative any change or termination of employment, any change in circumstances such as accident or illness, and he has to secure approval if he wants to purchase a motor vehicle, incur debts or assume additional responsibility, such as getting married or to own or carry firearms. He must abide by the instructions of his supervisor with respect to employment, companions, hours, intoxicants, operation of motor vehicles, medical and psychiatric attention, family responsibilities and court obligations. If he was told not to drink—he would not be told this unless we thought he had a problem with liquor—and we found that he had taken one drink, we would not necessarily revoke his parole if he was working and otherwise looking after his responsibilities, and so on. However, if he kept on drinking and misbehaving and lost his job, and so on, then he might be returned to prison.

Mr. MacGuigan: To what extent does your supervision of parolees involve assistance to them in getting employment and dealing with the other problems that they encounter on leaving prison?

Mr. Street: Almost all of them have jobs. As I said, in the survey which we did, of the 2,284 for which we got exact statistics 86 per cent were working. Most of them were able to get jobs. We like them to get jobs through their own efforts if they possibly can because then they will not be heard to complain, as they might, about a job that we or somebody else got for them. They are given assistance through the Manpower Centre and some of the outside agencies help them, but usually they get help from their families and people who are interested in them. Is that what you mean?

Mr. MacGuigan: Yes. But you keep an eye on this and if a man is not getting assistance in any other way I suppose you provide what assistance you can.

Mr. Street: That is right, we certainly do. Before he is released on parole we have what we call a parole program and we do a community investigation to find out where he is going to live, where he is going to work, who he is going to work for and who is going to supervise him. This is all laid on ahead of time and we must approve it.

Mr. MacGuigan: Yes. As to the criteria of release, you said that you knew the types of people who would not succeed. Could you make a brief statement on that?

Mr. Street: Statistically we know from experience that a person charged with fraud offences or a cheque forger, as Mr. Hogarth mentioned, has a higher rate of failure than anyone else. We know this, and this has been the experience in the United States as well. On the other hand, a murderer, who is at the other end of scale, has the lowest and of course there are not many being paroled, but they do not usually cause any trouble again. I do not know what else you want. There are such things as prediction devices—the Americans use them—which are based on the statistical experience of persons who have committed similar offences while on parole. It is well known that there is a high rate of failure in fraud-type offences but, on the other hand, if we make a mistake and parole a cheque artist and he cashes another cheque, at least nobody is hurt or injured. Somebody has lost some money and to that extent we have made a mistake in judgment, but then he was going to come out of prison anyway and quite often it is better to bring him out under control and try to ensure that he does not do this.

• 1210

Mr. MacGuigan: Thank you.

Mr. Hogarth: Mr. Chairman, with your leave may I ask the witness another question?

The Chairman: Yes, providing it is not too long.

Mr. Hogarth: Mr. Street, there is a bill before the present Parliament for the parole of Steven Murray Truscott. What is the status of this man right now as far as the Parole Board is concerned?

Mr. Street: He will not have served ten years until sometime next June.

Mr. Hogarth: As far as the Parole Board is concerned he is not eligible for parole until he has served ten years.

Mr. Street: That is right.

The Chairman: Mr. Brewin. I would like to observe again that it is 12.10 p.m., and as there are a number of members who still want to ask questions I would ask you to restrict yourselves as much as possible.

Mr. Brewin: Mr. Chairman, I would like to ask our witness about the question he raised. As I understood his remarks we are not using parole to the extent that we might, and there is more imprisonment in Canada than in other similar countries. I think you mentioned a figure of 43 per cent. Is that 43 per cent of all cases where there is application for parole?

Mr. Street: Just 43 per cent of those who apply, Mr. Brewin.

Mr. Brewin: Receive parole.

Mr. Street: Yes. This year we will parole about 36 per cent. Last year we paroled 3,086 and this year it will probably be about 3,600. We have probably dealt with about 12,000 cases, but 4,000 of those would be reserved decisions and parole was deferred, so that leaves about 8,000 decisions with respect to parole granted or denied. It would be 43 per cent of those who apply.

Mr. Brewin: How does this 43 per cent compare with figures in other countries? Is it because fewer people apply for parole or fewer people get it? What is the comparison in other countries.

Mr. Street: It is very difficult to make comparisons because the principal people you have to think about when you start making comparisons are the Americans. They are the only ones who really have parole as we know it. They have 50 different parole systems, because each state has its system. They vary widely from very good to very bad. Some states only release 10 per cent of the people on parole. On the other hand California, which is one of the most progressive states, releases 95 per cent of its people on parole, but naturally they have a high failure rate because everybody comes out on parole. Some states have sentences designed for parole, such as a minimum of two years and a maximum of ten years, and that provides for a parole period. We do not have this. Some states have a mandatory or statutory form of parole where, even though the man does not get parole as we know it, he is released under mandatory parole. It is very difficult to make

a comparison because you have 50 different systems to compare it with. Generally speaking, I would say that our system compares very favourable with any system in the world because we parole a fairly high percentage. We parole twice as many as we did ten years ago and yet we have had an extremely low failure rate on the average for the first ten years. In other words, we are paroling about 43 per cent in federal prisons, 46 per cent in provincial prisons—an average of 45 per cent—and we have a general average failure rate of 11 per cent. This compares extremely favourably with any other parole system in the world. Is that the information you wanted?

Mr. Brewin: Yes, I think so, but you did suggest that this rate could be increased, that we were not using parole to the fullest possible extent. I would like to know what the limiting factors are. I think you suggested there might be a lack of sufficient number of parole officers. Would that be a limiting factor?

Mr. Street: That is one, but as I have indicated to you, we have doubled the number of paroles in the last four years from 1,852 in 1964 to nearly double that number this year, four years later. But this has led to more and more applications, and I simply said that if we had more people we could deal more adequately with the applications which we have, which we are getting, and which we anticipate getting because of the more liberal policy about granting paroles. I meant to mention also that in the federal prisons, with about roughly 7,000 men, we are obliged to review those cases automatically, but one-third of the inmates who are eligible for parole each year do not apply for parole, and we hope that as more paroles are granted, those men will be encouraged to apply for parole. If we are able to have hearings in the institutions, I believe more, if not all, of those people would want to appear before the actual board that made the decision right on the spot so I hope we will get to that 1,300 or so who did not apply.

• 1215

Mr. Brewin: You need legislation to increase the members of the Board, to change the set up of the board?

Mr. Street: Yes, it is in the proposed amendments to the Parole Act.

Mr. Brewin: Yes, but you do not need any legislation to increase the number of parole officers, do you?

Mr. Street: No, we do not need legislation: we just need money.

Mr. Brewin: Money, yes. But you pointed out that the—

Mr. Street: It is being increased every year.

Mr. Brewin: Yes, I know, but I am trying to find out from you that what you think is a desirable objective because you have already pointed out, very clearly I think, that the effect of more parole is saving more money. You have also pointed out that in Canada we use it less than in other countries. I am trying to get from you a desirable goal.

Mr. Street: I think we are using parole fairly freely but since we have had such a favourable success rate, and since these men would be released sooner or later anyway, I am personally in favour of increasing the use of parole, which is what I hope we will do especially as our staff is added to. The other problems I mentioned are in the legislation which will be coming before the House, I hope sometime in this session, and will provide for an increase in the number of members of the Board and so on.

Mr. Brewin: The reason for my question is to suggest to you and to the Minister that your evidence would indicate that it would be a very highly desirable economy, let alone talking about the advantages to the people concerned, if the parole system were even more widely extended than it is at the present time.

Mr. Street: This is, of course, what we are doing. It is only in the last four years we started getting any additions to our staff and as a result of this, plus a change in policy, we were able to double the number of paroles and I hope that as we get more staff we will be able to carry on doing it. We are up to, say, 43 per cent of those who apply. I do not know where we will end up, perhaps at 60 to 70 per cent, but I want to keep trying until the failure rate gets out of hand and then we will have to be more careful. This is what we are doing. I do not know if this is what you had in mind, Mr. Brewin, but we are, as I say, increasing the number of paroles.

Mr. Brewin: I had in mind that you were doing very well and that you might even possibly do better.

Mr. Street: I hope so. If we get the legislation through we will be able to, I think.

Mr. Brewin: That is all Mr. Chairman.

The Chairman: Mr. MacEwan.

Mr. MacEwan: I have a couple of questions, Mr. Chairman. What is the minimum sentence which a Parole Board will consider; that is, the least sentence? I am thinking, for instance, of someone committed to a county jail. I know from experience of one case where the parole came through the day after the inmate was released. What do you consider to be the minimum sentence for which the Board should really consider parole?

Mr. Street: It would be easy enough for me to say that we should not really consider parole for any sentence under six months, because it does not give you enough time for the man to make a proper assessment of him, and how he is getting along, and for us to make a proper investigation. Normally our investigations take four months, but if we were to do that on a six months sentence, the time would be expired. So we do deal with every application, no matter what the sentence is. Last year which was the largest year in our history we granted 3,086 paroles, and 513 of those paroles were granted with respect to sentences of six months or less. The reason I do not like to exclude anybody from parole consideration is that, unfortunately, there are some parts of the country, which I think you know about, where they do not have as much probation as they should and they do not have proper prisons and, therefore, being in prison in some parts of the country is pretty harmful. They do not have any work program, or training program, and they are just locked up practically in dungeons, so it is better to get them out, if you reasonably can, under control on the outside. So we do parole everybody even with, say, a sentence of six months or less.

• 1220

Mr. MacEwan: Secondly, I think at the last session, Mr. Street, you gave evidence when there was a Private Member's Bill before the Justice Committee on the matter of expunging of records and I am trying to recall just exactly what you said at that time. I believe you stated you were in favour of this. What are your feelings on that matter now?

Mr. Street: At that time I said that I am in favour of some relief being given to persons

who have a criminal record and especially, if after a substantial number of years, it is apparent that they have become rehabilitated, but I was not in favour of the idea of automatically obliterating all records just because five years have gone by, because many of those people would not deserve it. However, if a man does deserve it I am in favour of some relief. I hesitate to go so far as to say the record should be erased, but what I did suggest is that that record should be put into an inactive file which would not be available to anybody, we will say, without the direction of the Solicitor General, which would answer part of the problem.

In connection with this idea, the Solicitor General and his two predecessors have granted substantially more ordinary pardons than was ever done before. For instance, this year alone there have been 144 granted in the first nine months. There were 15 last month. More extensive use is being made of the power to grant ordinary pardons, than was done, say, five years ago but even this does not really help the problem because the main reason a man wants a pardon is to get a visa to go to the United States and the Americans will not accept it. So, it does not really help them but this government or the Solicitor General cannot do anymore than he is doing. At least, if he gets an ordinary pardon this gives him an arguing point with the American authorities and they may give him a visa. However, it is in their regulations.

The other problem is bonding. Again, you cannot tell the bonding companies how to do business, but we are doing a lot of work with them to see if we can work out some sort of a scheme so that, after investigation, they would be considered better risk for a bond.

Those are the two main reasons a man wants a pardon.

Mr. MacEwan: The Solicitor General was asked about this, Mr. Chairman, and he suggested there would not be legislation or amendments to this effect brought before Parliament, but that he was considering something by way of parole. Are you working on anything which will be brought before Parliament? Who is answering, Mr. Chairman? I am trying to ask Mr. Street.

The Chairman: You indicated that the Solicitor General said there would not be any legislation, and I see him champing at the bit to make a correction on that statement.

Mr. MacEwan: Mr. Chairman, on a point of order: he suggested that there would be

something done not by way of what you call expunging but by way of some action, by way of parole, as I understand it. Perhaps he could answer this.

Mr. McIlraith: Perhaps I could just clarify it so that you could get on with the questioning of Mr. Street. What I said, or intended to say, was that there would be no legislation brought forward at this session; that we were working on the subject very hard; that I expected the legislation would be not merely confined to the expunging of records, but rather deal with the whole subject.

Mr. MacEwan: Of parole.

Mr. McIlraith: Of the difficulty that persons are having who had acquired a record perhaps early in life and had rehabilitated themselves successfully in later years. We will have a short statement to make on that at a later point in the proceedings.

Mr. MacEwan: When, Mr. Minister? When will that statement be made?

The Chairman: We hope to have a meeting on Thursday.

Mr. MacEwan: Will there be a statement made Thursday on this?

Mr. McIlraith: If that is your program.

Mr. MacEwan: Well, I am just wondering when this statement will be made.

Mr. McIlraith: It is up to the Committee—whenever I would have the appropriate opportunity. I would think Thursday would be agreeable.

Mr. MacEwan: That is all thank you.

The Chairman: Thank you Mr. MacEwan. Mr. Valade.

Mr. Valade: Mr. Street, I have a few questions and one of them refers to the records that my colleagues have just mentioned.

In my public life experience I have noticed that many of the parolees find it hard to keep a job because of this record. I know of a case where a parolee lost his employment nine times because of the inquiring into his record or demanding information on his past employment. Of course, I do not want to get into contradictions, but why are these records of persons who are paroled referred to employers?

• 1225

[Interpretation]

Mr. Street: That's a good question.

[English]

Perhaps I had better speak in English.

Mr. Valade: That is why I asked the question in English.

[Interpretation]

Mr. Street: I am sorry you did not put your question in French. I would have a chance to speak French.

[English]

Mr. Valade: Can I rephrase the question?

Mr. Street: I like to show off in front of the Minister. I do not know the case you are referring to but if he will write to us we will have an investigation made, and if he is a good citizen, and has a good reputation, and seems to have been rehabilitated and not likely to be in crime again, then he could be recommended for an ordinary pardon. That is all anybody can do for him right now. If he would write to us, we will certainly have an investigation. We are certainly doing enough of them. As I say, the Minister has granted 144 this year. That will overcome part of his problems.

You asked how they get into their hands. Well, they certainly do not get into the hands of anybody else through the Royal Canadian Mounted Police. The Royal Canadian Mounted Police job is to be custodian of records sent to them by various police forces across the country. They would not under any circumstances release that information to anyone but an authorized police force and they will not even do that in the case of a police force that is under civilian contract. It has to be a regular police force or they will not even do it. They release them to us, of course, but to no-one else. The only way they can get into the hands of these other people, such as credit bureaux and employers, is, I think, through the local Chief of Police. He knows, and he is not bound by any confidence. He can tell an employer anything he likes. That is the only way that unauthorized persons can find out about a previous record.

Mr. Valade: Mr. Street, my question had a fundamental purpose because I assume that the federal government, when it employs a person, certainly looks into his record.

Mr. Street: No. The application form of the federal Public Service does not have a question dealing with records.

Mr. Valade: I am asking the question because I want to find out how a person can get a steady job if at any time his record can become known? This person was employed by the Post Office Department and at one point he was called into the Department and told that he had a record and they would investigate to see if they could keep this man. The purpose of my question is to find out how these people can secure employment when they get out of jail and keep their employment if information on their records can be obtained?

Mr. Street: Well, as I indicated, in the survey we did 86 per cent of the 2,200 persons on parole were working. I really do not think a man has any difficulty if he has any trade or skill. He gets a job very easily. It is the unskilled people that have difficulties. So far as the government service is concerned, they have changed the application form so there is no question on it asking about previous records. Now, I do not know what the Post Office policy is. I imagine they would be a little more sensitive because they are handling mail and cash, and I think they certainly would be justified in checking a man's previous record. I do not know anything about it, but if I were involved I would want to know about it if he were handling cash for me, but generally speaking the government service does not. It is not even on the application form and that is all I know about it.

Mr. Valade: I have another question, Mr. Street. Before a person is paroled what do you require from him? Do you make sure that he gets employment before he is paroled?

Mr. Street: No.

Mr. Valade: How can this person get employment?

Mr. Street: We expect him to endeavour to maintain steady employment. We hope he will have a job to go to, but if he does not have a job it does not mean he would not get a parole. He would be released on parole and then efforts would be made to find a job for him, but a job is not a requisite to obtaining a parole.

Mr. Valade: This means that your department is not preoccupied in setting up some form of security for those persons who are paroled. There is no way that your department is organized to help rehabilitation in that way. I am thinking of a similar thing. I

think in England they have a special organization set up to provide—I do not know what they call it—permanent employment through government.

Mr. Street: Well, he does. As I said, the Manpower offices have special agents or officers whose job it is particularly to find jobs for inmates in prison, whether they are coming out on parole or otherwise.

●1230

Mr. Valade: Once they are released . . .

Mr. Street: We work with them very closely and we make every effort we can to help him get a job.

Mr. Valade: Prior to their release, or after?

Mr. Street: Yes, prior to their release, but I did not want you to think that a man has to have a job to go to before we will release him. We might release him with the expectation he will make efforts to find work.

Mr. Valade: Do you think the training in jail is sufficient to allow these prisoners, to get integrated into employment when they are freed?

Mr. Street: I do not think anything about the system is as good as anyone would like, but I think it is only fair to remember that most people in prison do not have the aptitude, ability or intelligence to want to learn a trade. It is very difficult to motivate them to want to learn a trade. There are lots of prisons in Canada, especially federal prisons, where they have all these things available, but it is very difficult to get people involved in them. We are doing it all the time and encouraging them the best way we can, but a good many of them just cannot do it and will not do it. They do not have the aptitude to learn a trade, but of the ones who do, I would say that it is reasonably easy to get trades training if they are the least bit interested in it.

Mr. Valade: I see. Mr. Street, sometimes people apply for parole, their applications are reviewed and then the decision is that they are not accepted and they are postponed. This happens, I know, because I have some files in my office concerning this type of thing. Sometimes the application is postponed two or three times. What are some of the reasons the parole is not granted when it is first applied for? Are there specific reasons for refusing a parole?

Mr. Street: Quite often it is because we just do not have enough officers to do it. We only have 89 parole officers in all of Canada, in 23 different offices across the country. This means that when a man applies for a parole we are obliged to go to and see a probation officer or the Salvation Army or someone to do a community investigation report to check it out for us. These people are busy and they cannot always do it. We can only ask them; we cannot tell them. They are often delayed and it is not satisfactory to be at the mercy of all these volunteer agencies all the time.

We should have more parole officers so we can do it ourselves. Our officers main job is to interview the inmates and we are swamped with applications, because of the increase in paroles. We simply do not have enough officers to do the job as well or as quickly as we would like. If we had more officers we would grant more paroles and get men out on parole sooner.

Mr. Valade: But this is a problem, then, of administration and not some fault in the prisoner himself.

Mr. Street: Well, it could be that when he first applies for parole either it is a little too early or the reports we get at that time are not conducive to consideration for parole, in which case it would be deferred. If it is an outright denial it means that he does not get it and it is not brought up again for two years. It could be that if it is deferred there is perhaps some evidence of improvement but not enough to warrant a parole, and he is told. It could be that it is his own fault and that he has not done enough to justify getting a parole.

Mr. Valade: I do not want to elaborate too much on that. I would like to ask, what are the requisites of parole officers? What education and qualifications do they need?

Mr. Street: They have to be social workers. We are glad to have psychologists too. We have a couple and we also have lawyers. All of our men are professional men and have university educations, with only one or two exceptions, and the most common degree is a Masters degree in social work.

Mr. Valade: What salaries are being offered to these people?

Mr. Street: In the junior grades it is \$6,000 to \$8,000 and in the senior grades it is \$8,000 to \$10,000. Regional representatives who are in charge of an office get \$10,000 to \$12,000.

• 1235

Mr. Valade: I have finished, Mr. Chairman.

The Chairman: It is twenty-five minutes to one and there are at least five or six members who wish to ask questions. Does the Committee wish to sit until 1 o'clock? We will proceed, then. Mr. Ouellet?

Mr. Valade: Excuse me, Mr. Chairman; I forgot to ask one question. I do not want to delay Mr. Ouellet, but I just wanted to know about allowing visitors to prison. I am talking about allowing men to receive their wives or their girl friends in prison more frequently. Do you think this would help rehabilitation psychologically? Do you have an opinion about this?

Mr. Street: Are you talking about the idea of conjugal visiting?

Mr. Valade: Yes, but perhaps more social; not necessarily conjugal. For anyone who has a wife or a girl friend, would these visits help rehabilitation in your estimation?

Mr. Street: As you know, it is none of my business. I have nothing to do with it, but if you want my view I am not in favour of conjugal visiting as such. I am inclined to agree with A. J. MacLeod. His view is that rather than have somebody solemnly troop up to spend the night with her husband in prison, I would let the husband go home and spend the night or weekend with her. I would rather see more of that than this business of conjugal visiting you hear about in Mexico and other foreign countries.

As for visiting facilities, in minimum types of institutions they make it as pleasant as they can. You should go to William Head some day; you have never been in a finer place in your life for pleasant surroundings. It is on the coast out in the country and it is a beautiful place. You can sit and talk to your wife and children on benches, and they make it as nice as they can.

Mr. Valade: I asked that question, Mr. Street, because, after all, parole is rehabilitation and as you said you have gradual rehabilitation before the parole is granted. I think this is a very important part of social rehabilitation.

Mr. Street: You should do whatever you can to keep the man in touch with his family and keep the family in touch with him...

Mr. Valade: Exactly.

Mr. Street: ...and keep him in touch with the outside world.

Mr. Valade: This type of parole has something to do with rehabilitation; that is why I asked the question. I think that is part of it.

Mr. Street: I think it is very good.

The Chairman: Mr. Ouellet?

[Interpretation]

Mr. Ouellet: May I put a question to you in French, sir? I already had the pleasure of conversing with you in French and you were marvelous then so I will give you another opportunity to distinguish yourself.

I would like to tell you first, following the remarks of Mr. Valade a moment ago, that unfortunately too often there are prisoners who have done a third of their sentence and then who would be eligible for parole, have to wait for weeks and months before finally being paroled. I think that this causes great frustration and disappointment for these people, and certain pessimism. I'm sure it does not help at all in their rehabilitation, quite the contrary indeed. I would like to ask you, whether just before the Yuletide season, Christmas and New Year, you intend to take exceptional steps to make a decision on all the applications for parole which the Board is now considering.

Mr. Street: I agree, Mr. Ouellet. It is very disappointing for a prisoner who has filed an application for parole, after having served a third of his sentence, the wait is very hard indeed for a man when he has to wait from day to day, but actually, we are very busy, we have received a lot of applications for parole and our officials were unable to study all applications in time. We are trying to speed the process up, of course. We are trying to complete as many of these applications as possible in time.

• 1240

We have made special arrangements for the consideration of parole of all those eligible before the 15th of January, to advance their parole to December 15. Instead of granting parole at the end of January, we could grant this a week or two before Christmas rather than a week or two after.

Mr. Ouellet: I think that your idea of considering these files in advance is very laudable, but as you are overworked already in

addition if you add the files already before the Board (I mean those eligible for parole at the end of October, November and early in December) you add those cases that might be granted parole at the end of December or the beginning of January, do you really have the time to consider all these files before Christmas?

Mr. Street: We can consider all those files of the people that would be eligible before Christmas or before January 15. We are just taking the time to do it, because we want to grant parole before. But, as I said a moment ago, this is very difficult. It is very difficult to consider all the applications that are being put because we certainly have a serious overload.

Mr. Ouellet: I understand your problem very well. You seem to be saying that all the prisoners that are eligible for parole, will be considered before Christmas?

Mr. Street: Yes.

Mr. Ouellet: And that decisions, one way or the other, will be made before Christmas?

Mr. Street: Yes. We have bent over backwards to make this possible.

Mr. Ouellet: Just another question, Mr. Chairman, if I may. A moment ago, you mentioned that the salary scales for the employees of the Parole Board were from \$6,000 to \$8,000 for the officers and \$8,000 to \$10,000 for class 2. How can you hope to obtain an appreciable, a substantial number of candidates coming with university background, when you are offering them these salaries? I have studied, I have seen your notices of application which are prepared by the Civil Service Commission. You require a university degree. I believe that the greater number of university graduates can obtain more than \$6,000 in other fields of activity.

Mr. Street: That is true. The salaries for all our services are to be increased in the near future. But we have managed to hire all the people that we needed so far.

Mr. Ouellet: Do you employ people who do not have a university degree?

Mr. Street: Not very many. Not for the Parole Board, in any case. They must have a B.A.

Mr. Ouellet: Don't you believe that you could obtain much more applicants or candi-

dates and fill in your staff much more adequately if you could employ people who have related experience or a diploma other than the B.A.?

Mr. Street: I quite agree. That is exactly what we will have to do in future, especially if we expect to have a staff of a hundred parole officers for "mandatory parole".

Mr. Ouellet: Thank you.

[English]

The Chairman: Mr. McGleave has to leave for another meeting and he has one short question.

Mr. McCleave: Thank you very much, Mr. Chairman and colleagues.

Mr. Street mentioned earlier the tendency in Canada to put more people in jail than is the case in other western countries. What practical steps might be taken to reduce—

• 1245

The Chairman: Excuse me. Gentlemen, if you leave now we have lost our quorum. I intend to adjourn at one o'clock. Is there any possibility of staying another 15 minutes? We have had a good attendance and we would like to get this carried.

Mr. Ouellet: I have to go to my office but I will come back right away.

Mr. MacGuigan: I have to leave shortly before one o'clock, Mr. Chairman, but I will stay another five minutes. If the Chairman does not notice the quorum, the quorum is still here.

The Chairman: Well, I might notice it but someone else might too but if you could stay for a few minutes anyway I would appreciate it.

Mr. McCleave: I asked the question if Mr. Street had practical suggestions to make about cutting down the tendency to put people in jail in Canada.

Mr. Street: As you know, Mr. McGleave, in order to do this I suggest we should make even more use of probation than we have, but it is very difficult, in effect, to tell the judges across the country, of whom there are about 1,000, how to sentence people.

If there were more probation facilities and more probation officers in the various provinces, then the judges could at least make

more use of probation than they do at present. There are not as many probation officers in some parts of the country as we might have but that is a provincial responsibility. What the federal government could or should do about it, if anything, is hard to say. I suggest that it could be encouraged though, and then there is the idea—but this is something for someone other than me to think about—of a Model Sentencing Act such as the Americans have to classify criminals which would encourage the use of probation and write some philosophy of sentencing into our Code—things like that. I cannot think of anything else to suggest other than that.

[*Interpretation*]

Mr. De Bané: I will ask my question in French, but you may reply in English. How many parole officers will you have next year on the Board?

Mr. Street: Next year?

Mr. De Bané: Yes.

Mr. Street: We have 90 parole officers in the entire country.

Mr. De Bané: And next year, how many will you have?

Mr. Street: Only 20 more next year.

Mr. De Bané: Twenty more?

Mr. Street: Yes. Twenty more officers.

Mr. De Bané: Then next year, we shall have 110?

Mr. Street: I beg your pardon?

Mr. De Bané: Next year...

Mr. Street: Yes, I hope so. I wish we had much more. There are about 20 positions in our service that are frozen. I think that these 20 positions which are frozen will be opened.

Mr. De Bané: But I am looking now at the operation of your Board...

I have just seen a communique from the Chairman of the Board of the Unemployment Insurance Commission and he says that next year he will hire about 150 more people to make the inquiries in order to find those who have defrauded the Unemployment Insurance Commission. If the Unemployment Insurance Commission could find 150 new staff-members to detect this type of fraud, could you not

make the same effort to rehabilitation of criminals?

Mr. Street: I quite agree, Sir. I hope that just like that?

Mr. De Bané: But, how can the Unemployment Insurance Commission find 150 people just like that?

[*English*]

Five years ago how many officers did you have to make those investigations?

[*Interpretation*]

Mr. Street: We will have... I think the question which you have put is being considered by the new assistant Solicitor-General.

Mr. De Bané: I think you understand why I am puzzled that the other government commission more than doubles its officers in one year.

Mr. Street: As I understand it, from reading the papers they expect to stop people cheating on their unemployment insurance, and it will save them money.

Mr. De Bané: That is what I am saying. When they have to find possible criminals, they can double their effectiveness, for rehabilitation purposes it seems to be more difficult.

Mr. Street: I agree, Sir.

[*English*]

Mr. McCleave: In other words, it is all right to put more people in jail, but you have not the staff to deal with them.

Mr. Street: Yes; spending too much money on prisons, Mr. McCleave, and not enough on people. I hope I will not be in trouble with my Minister for saying that. However, as the Minister says, he has been working on this idea for some time.

Mr. De Bané: On another subject, does it happen often that you do not follow the advice of the judge who has rendered the sentence? Does this happen often? Can you ask his advice before reaching a decision?

[*Interpretation*]

Mr. Street: No, not in all cases. We invite all the judges throughout the country to submit a report if they wish but they are not compelled to. Most judges across the country do not submit any report. Even if they do

they do not necessarily make any recommendations.

Mr. De Bané: Do I understand that there is not a systematic consultation with the sentencing judge?

Mr. Street: No, not in all cases. We have tried this system and it did not work well. Most judges do not want to submit a report and even though they do, it is sometimes incomplete and contains no recommendation. Even where they make a recommendation we cannot always follow it. We must have a policy that is standard national; the policy of a particular judge might not be necessarily in keeping with the norm.

Mr. De Bané: I understand but I was putting this question because after having talked over this matter with many judges, they told me they were quite frustrated because in spite of having presided over the trial and seen the prisoner, having heard all the witnesses, their opinion is not even sought. Do you not think . . .

Mr. Street: No, this is not true.

Mr. De Bané: No.

Mr. Street: Every time a new judge is appointed I write him a letter personally and I ask him in the letter whether he wants to submit a report in each and every case and that we will be very happy to receive his reports. If he wants to submit a recommendation, he is perfectly free to do it. Some judges are against the whole idea of Parole at all, as you know.

Mr. De Bané: Another question. Does the federal government . . .

[English]

The Chairman: Mr. De Bané, we have five minutes left and there are two more questioners. I am wondering if you could make it very brief.

Mr. De Bané: Certainly.

The Chairman: I think Mr. Chappell would like to ask a question.

Mr. De Bané: I will ask short questions and I will have short answers.

Does the federal government hire ex-prisoners?

Mr. Street: Yes, we do.

Mr. De Bané: To what level?

Mr. Street: Oh, any level for which they are qualified.

Mr. De Bané: Oh, yes?

Mr. Street: Oh yes. I hired one myself one time. He was a lawyer.

Mr. De Bané: So they can be hired.

• 1255

Mr. Street: Oh, yes.

Mr. De Bané: Then a question for my personal information. Is it contrary to the ethics for an M.P., following receipt of a letter from a constituent to write a letter to the Commission about the deliberations?

Mr. Street: I do not think there is anything improper about it. I do not see how you can avoid it. This whole business in Ottawa is a pretty mixed up business to anybody outside. It is even tough for me to know my way around, and how is a person going to find out if he does not ask his member and the member usually writes just to ask for information and most of the time they do not know the person. They are simply writing and we reply and say the man is serving a sentence of so-and-so and he is eligible at so-and-so; his case is being considered or is not being considered; he has applied or has not applied. I do not see anything wrong with members of Parliament writing to us. They write to us all the time. Sometimes they know the person and might want to put in a plug for him. We get opinions from many other people and we are glad to get an opinion from a member of Parliament who is a responsible citizen. He may know the person; most of the time they do not, but if he does, there is no harm in recommending him. I do not consider this improper at all. I have never had any form of pressure or what would be called pressure.

Mr. De Bané: I did not know how you handled those matters.

Mr. Street: I would rather they would write to me than write to the Minister because we simply have to answer the letter for the Minister and the Minister has nothing to say about it. It is none of my business, but I would prefer they would write to me.

Mr. De Bané: I assume we will have another occasion to ask questions, Mr. Chairman?

The Chairman: I do not think so as far as Mr. Street is concerned, but the estimates will be coming up again in February so there will be lots of opportunity.

Mr. de Bané: Thank you.

Mr. Chappell: Time is limited so I will just ask one of my questions.

How does your formula take into consideration the seriousness of the crime, for example, murder, and in the success of your therapy in correcting the defect in the character that allowed the crime?

Mr. Street: Are you thinking of murder, particularly?

Mr. Chappell: Any serious crime. It could be a serious crime where the man had a sentence of many years, for example, for rape, but there must be some therapy which hopes to correct the defect or fill up the defect in the character that allowed the man to do it. I want to know how much is weighed for the seriousness of the crime and how much in the success of the therapy?

Mr. Street: Naturally, we have to be very careful if it is a crime of violence like rape or murder because we want to do everything we can to ensure that he is not likely at all to do it again. Murder is more or less in a class by itself. For most of the people who are recommended for parole on a charge of murder it is usually a one-time incident in their lives. For example, a man has killed his wife or committed a crime under circumstances of extreme provocation or extreme depression. We do not get many where they have shot a policeman in the course of robbing a bank or things like that where it is a professional type criminal. With respect to rape, the incidence of recidivism in rape is extremely low, and unless he is a dangerous sexual offender of some kind, which means he has no control over his faculties, then the average case of rape is usually not repeated whether he gets a parole or does not get a parole. But again, you study him the best you can and if it is a crime of violence we get the opinion of a psychiatrist or a psychologist and make as careful an assessment of him as we can. Does that answer your question?

Mr. Chappell: Yes.

The Chairman: Thank you very much, Mr. Chappell. I would like on behalf of the Committee, Mr. Street, to thank you for your

attendance. Certainly it was very interesting, and thank you for an excellent job.

Mr. Street: Thank you, Mr. Chairman.

The Chairman: We are on Item 5—Correctional Services. We discussed this at two or three meetings and I now ask if this item will carry.

Some hon. Members: Carried.

Item 5 agreed to.

The Chairman: I now call Item 10:

10 Construction or Acquisition of Buildings, Works, Land and Equipment. \$19,422,000

We have not gone into this. If there are any questions, perhaps they could be asked. If not, I would also like to see this item carried.

Mr. De Bané: In my riding of Matane in the eastern part of the Province of Quebec, many people in the region of Causapsca have been pushing hard for many years to have a prison constructed in that area, and I would like to know if that project can be seriously considered and a favourable decision taken, Mr. Minister.

Mr. McIlraith: I would be very glad to look at it to see if anything can be done, but I would draw your attention to the fact that we have been in the fortunate position of being able to reduce the penitentiary population in the last five years rather than have it grow as was anticipated. Construction in the sense of additional facilities is not likely to be as rapid as was anticipated five or six years ago. A construction is more likely to be a replacement of certain very inadequate facilities we have in some aspects of the work.

• 1300

The Chairman: Thanks, Mr. Minister.

Mr. Valade: Mr. Chairman, when you speak about acquisition of land, is it just for the expansion of actual prisons, or is it new locations?

Mr. McIlraith: There are no new locations. I am not aware of any new locations at all. It is an authority to acquire land.

Mr. Valade: This item is just to acquire land, if required, but there are no plans?

Mr. McIlraith: No, not for additional new buildings in wholly new areas.

Mr. Ouellet: Mr. Chairman, at one of the first hearings I asked a question about minimum security penitentiaries in the Province of Quebec. I was told I would receive a reply at a later date. Are you now in a position to tell me if there will be other construction? I am mainly interested in minimum security.

Mr. McIlraith: Not at the moment. My recollection is that that was in the evidence of the first hearing, and I have one or two of those answers ready to come forward at the next meeting.

Mr. Ouellet: Thank you, Mr. Minister.

The Chairman: Shall Item 10 carry?
Item 10 agreed to.

The Chairman: We plan to have a meeting next Thursday morning. The Solicitor General has indicated he will be present to make a statement. I think this statement will embrace

the question of the erasing of criminal records, so perhaps at that time those who have questions can be made aware of it and can do their homework.

Mr. De Bané: We are scheduled to meet at 9.30?

The Chairman: At 9.30 and all morning. We can carry right on until 12.30 or 1.00.

Mr. McIlraith: I was pointing out to the Chairman that at 9.30 we have a Legislation Committee meeting dealing with the legislation affecting the Department, the Prisons and Reformatories Act and the Parole Act, and then we have a Cabinet meeting immediately after. I am wondering if I could talk with your Chairman and Clerk about another more agreeable hour.

The Chairman: Agreed. We will adjourn then to the call of the Chair.

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OF
PROCEEDINGS AND EVIDENCE

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ALISTAIR FRASER,
The Clerk of the House.

OFFICIAL BILINGUAL ISSUE

FASCICULE BILINGUE OFFICIEL

HOUSE OF COMMONS

CHAMBRE DES COMMUNES

First Session

Première session de la

Twenty-eighth Parliament, 1968-69

vingt-huitième législature, 1968-1969

STANDING COMMITTEE

COMITÉ PERMANENT

ON

DE LA

JUSTICE AND LEGAL AFFAIRS

JUSTICE ET DES QUESTIONS
JURIDIQUES

Chairman

Mr. Donald R. Tolmie

Président

MINUTES OF PROCEEDINGS
AND EVIDENCE

PROCÈS-VERBAUX ET
TÉMOIGNAGES

No. 6

TUESDAY, JANUARY 28, 1969

LE MARDI 28 JANVIER 1969

BILL S-3

BILL S-3

An Act to amend the Canada
Evidence Act.

Loi modifiant la Loi sur la preuve
au Canada.

Appearing:

A comparu:

The Honourable John N. Turner, Minister
of Justice and Attorney General of Canada.

L'honorable John N. Turner, ministre de la
Justice et Procureur général du Canada.

WITNESS:

TÉMOIN:

(see *Minutes of Proceedings*)

(voir *procès-verbal*)

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

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DE LA
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¹ Alexander,
Blair,
Brewin,
Brown,
Cantin,
Chappell,

² De Bané,
Gervais,
Gibson,
Gilbert,
Hogarth,
MacGuigan,

McCleave,
McQuaid,
Rondeau,
Schumacher,
Valade,
Woolliams—(20).

(Quorum 11)

Secrétaire du Comité:
Fernand Despatie,
Clerk of the Committee.

¹ Replaced Mr. MacEwan on January
28, 1969.

² Replaced Mr. Marceau on December
2, 1968.

¹ Remplace M. MacEwan le 28 janvier
1969.

² Remplace M. Marceau le 2 décembre
1968.

ORDER OF REFERENCE

MONDAY, January 20, 1969.

Ordered,—That Bill S-3, An Act to amend the Canada Evidence Act be referred to the Standing Committee on Justice and Legal Affairs.

ATTEST:

ALISTAIR FRASER,
The Clerk of the House of Commons.

ORDRE DE RENVOI

Le LUNDI 20 janvier 1969

Il est ordonné,—Que le Bill S-3, Loi modifiant la Loi sur la preuve au Canada, soit déferé au comité permanent de la justice et des questions juridiques.

ATTESTÉ:

Le Greffier de la Chambre des communes,
ALISTAIR FRASER.

REPORT TO THE HOUSE

THURSDAY, January 30, 1969.

The Standing Committee on Justice and Legal Affairs has the honour to present its

SECOND REPORT

Pursuant to its Order of Reference of Monday, January 20, 1969, your Committee has considered Bill S-3, An Act to amend the Canada Evidence Act, and has agreed to report it without amendment.

A copy of the Minutes of Proceedings and Evidence relating to this Bill (*Issue No. 6*) is tabled.

Respectfully submitted,
DONALD TOLMIE,
Chairman.

RAPPORT À LA CHAMBRE

Le JEUDI 30 janvier 1969

Le Comité permanent de la justice et des questions juridiques a l'honneur de présenter son

DEUXIÈME RAPPORT

Conformément à son ordre de renvoi du lundi 20 janvier 1969, le Comité a étudié le Bill S-3, Loi modifiant la Loi sur la preuve au Canada, et est convenu d'en faire rapport sans modification.

Un exemplaire des procès-verbaux et témoignages relatifs à ce bill (*fascicule n° 6*) est déposé.

Respectueusement soumis,
Le président,
DONALD TOLMIE.

(Text)

MINUTES OF PROCEEDINGS

TUESDAY, January 28, 1969.

(7)

The Standing Committee on Justice and Legal Affairs met at 11:05 a.m. this day. The Chairman, Mr. Tolmie, presided.

Members present: Messrs. Alexander, Blair, Brewin, Brown, Cantin, Chappell, Gervais, Gibson, Gilbert, Hogarth, MacGuigan, McQuaid, Ouellet, Tolmie, Valade—(15).

Also present: Mr. Marceau, M.P.

Appearing: The Honourable John N. Turner Minister of Justice and Attorney General of Canada.

Witness: From the Department of Justice: Mr. J. A. Scollin, Director, Criminal Law Section, Legal Branch.

The Clerk of the Committee read the Order of Reference dated January 20, 1969.

The Chairman introduced the Minister of Justice and Attorney General of Canada who, in turn, introduced officials from his Department.

The Committee proceeded to the consideration, clause by clause, of Bill S-3, An Act to amend the Canada Evidence Act.

The Minister made a statement on each clause of the Bill, and was examined. He was assisted by Mr. Scollin in answering questions.

Clauses 1, 2, 3, 4 and 5 were severally carried.

The title carried.

The Bill carried.

(Texte)

PROCÈS-VERBAL

Le MARDI 28 janvier 1969

(7)

Le Comité permanent de la justice et des questions juridiques se réunit aujourd'hui à 11 h. 05 du matin. Le président, M. Tolmie, occupe le fauteuil.

Présents: MM. Alexander, Blair, Brewin, Brown, Cantin, Chappell, Gervais, Gibson, Gilbert, Hogarth, MacGuigan, McQuaid, Ouellet, Tolmie, Valade—(15).

Aussi présent: M. Marceau, député.

Comparait: L'honorable John N. Turner, ministre de la Justice et Procureur général du Canada.

Témoin: Du ministère de la Justice: M. J. A. Scollin, directeur, Section du droit criminel, Direction juridique.

Le secrétaire du Comité lit l'ordre de renvoi en date du 20 janvier 1969.

Le président présente le Ministre de la Justice et Procureur général du Canada. Ce dernier présente les représentants de son Ministère.

Le Comité passe à l'étude, article par article, du Bill S-3, Loi modifiant la Loi sur la preuve au Canada.

Le Ministre fait une déclaration sur chaque article du bill et est interrogé. Il est secondé par M. Scollin.

Les articles 1, 2, 3, 4 et 5 sont adoptés séparément.

Le titre est adopté.

Le bill est adopté.

The Chairman was *instructed* to report Bill S-3, without amendment.

The Chairman thanked the Minister and the Department of Justice officials for their appearance before the Committee.

At 12.10 p.m., the Committee adjourned to the call of the Chair.

Fernand Despatie,
Clerk of the Committee.

Le président est *chargé* de faire rapport du Bill S-3 sans amendement.

Le président remercie le Ministre et les représentants du ministère de la Justice de s'être présentés devant le Comité.

A midi 10 minutes, le Comité s'ajourne jusqu'à nouvelle convocation du président.

Le secrétaire du Comité,
Fernand Despatie.

EVIDENCE

(Recorded by Electronic Apparatus)

Tuesday, January 28, 1969

• 1107

The Chairman: Gentlemen, I see a quorum. I should first of all announce that there will be a meeting at 3.30 this afternoon, unless, of course, we complete the bill this morning. For those members who are not present we will have a notice sent out.

I will have the Clerk read the order of reference.

The Clerk:

Monday, January 20, 1969.

ORDERED, That Bill S-3, an Act to amend the Canada Evidence Act, be referred to the Standing Committee on Justice and Legal Affairs.

The Chairman: We will now commence a clause-by-clause consideration of Bill S-3, an Act to amend the Canada Evidence Act.

I would like to introduce the Minister of Justice and the Attorney General of Canada, Mr. Turner. Perhaps, in turn, he could introduce the gentlemen from his Department.

Hon. John N. Turner (Minister of Justice and Attorney General of Canada): Mr. Chairman and members of the Committee, this is the first time I have appeared under the new committee system. As a matter of fact, it is the first time I have appeared as a minister before the Committee. I recall, though, with a great deal of pleasure, the fun I had when I was on the other side of the table and I think I understand the game and I am looking forward to it. We will do the best we can for you.

I have with me, first on my far right, Mr. Donald Christie who is the Assistant Deputy Attorney General for the Department of Justice and on my immediate right is Mr. John Scollin who is the Director of the Criminal Law Section, Legal Branch, of the Department of Justice. We are dealing with highly technical law, lawyers' law, and a good many of the questions that you put to me I will be referring to the law officers of the Crown here and they are at your entire disposal.

If you wish me to go into Clause 1, perhaps the procedure that you might like to follow, Mr. Chairman, subject to the discretion of your members, is for me, or the law officers to make a general statement, a short general

TÉMOIGNAGES

(Enregistrement électronique)

[Interprétation]

Le président: Messieurs, nous avons un quorum. Je veux tout d'abord vous annoncer qu'il y aura une séance à 3 h. 30 cet après-midi, à moins, bien entendu, que nous finissions l'étude du bill ce matin. Nous enverrons un avis aux membres qui ne sont pas ici présents.

Je demande au greffier de lire l'ordre de renvoi.

Le greffier: Lundi, le 20 janvier 1969:

IL EST ORDONNÉ—que le projet de Loi S-3 pour modifier la Loi sur la preuve au Canada soit renvoyé au Comité de la justice et des affaires judiciaires.

Le président: Nous ferons une étude article par article du projet de Loi S-3 pour modifier la Loi sur la preuve au Canada. Je vous présente le ministre de la Justice et Procureur général du Canada, M. Turner, qui nous présentera les messieurs de son ministère.

L'hon. John N. Turner (ministre de la Justice et Procureur général du Canada): Monsieur le président et messieurs les membres du Comité, c'est ma première présence depuis l'inauguration du nouveau régime des comités. Comme question de fait, c'est ma première présence à titre de ministre devant le Comité. Toutefois, je me souviens avec grand plaisir de l'amusement que j'ai éprouvé lorsque j'étais de l'autre côté de la table et je crois connaître les règles du jeu et je l'attends avec plaisir. Nous ferons le plus possible pour vous aider.

J'ai avec moi d'abord à ma droite éloignée, M. Donald Christie qui est sous-procureur général adjoint au ministère de la Justice et à ma droite immédiate, M. John Scollin qui est directeur de la Section du droit criminel de la Direction juridique du ministère de la Justice. Nous examinons une loi très technique, une loi à l'intention des avocats, et une grande partie de vos questions seront transmises aux légistes de la Couronne, ici présents, et ils sont à votre entière disposition.

Si vous désirez que j'examine avec vous l'article 1, je crois, monsieur le président, que la meilleure procédure que vous pourriez suivre, à la discrétion de vos membres, serait que moi, ou un des légistes, fasse une déclai-

[Text]

statement on each clause before we turn it open for questioning.

Clause 1: By the operation of subsection (1) of Section 7 of the Canada Evidence Act, not more than five professional witnesses or other experts may be called at a trial or other proceeding by either side, by either the prosecution or the accused, to give opinion evidence without the leave of a court or the judge, or the person presiding.

Subsection (2) of the present statute provides that:

(2) Such leave shall be applied for before the examination of any of the experts who may be examined without such leave.

It is proposed that subsection (2) be repealed. In other words, leave to call witnesses beyond the five permitted may be made to a judge at any time during the proceedings, subject of course to the discretion of the judge.

• 1110

The Criminal Law Section of the Conference of Commissioners on Uniformity of Legislation in Canada recommended this amendment in 1960 and reaffirmed it in 1966. It was represented to the Commissioners that failure to comply with the technical requirement prescribed in the present subsection (2) of Section 7 had, on occasion, resulted in a miscarriage of justice by reason of the fact that all relevant evidence could not be placed before the court.

In the case of the Rex against Barrs, 1946, ICR 301, it was necessary for the Appellate Division of the Supreme Court of Alberta to quash a conviction for murder and order a new trial by reason of the fact that subsection (2) of Section 7 was not complied with. The original trial had lasted 15 days. The Legislative Assembly of Alberta made such a change in the evidence act of that province in 1958; the same course of action was followed in Ontario in 1960 and in Manitoba in 1965.

The Chairman: Is there any discussion on clause 1? Mr. Gilbert, please?

Mr. Gilbert: Mr. Chairman, as a starting question, a general question to the Minister, is there any attempt on the part of your Department and the Attorneys General across the country to have a uniformity in the Canada Evidence Act with the other evidence acts, the provincial evidence acts?

[Interpretation]

ration d'ensemble, une brève déclaration visant chaque article, avant de passer aux questions.

Article 1: En vertu de l'application du paragraphe (1) de l'article 7 de la Loi sur la preuve au Canada, pas plus de cinq témoins qui sont des professionnels ou des experts ne peuvent être appelés à un procès ou autre procédure par l'une ou l'autre des parties, soit la poursuite ou l'accusé, pour exprimer des opinions comme témoignage sans la permission de la cour, du juge ou de celui qui préside.

Le paragraphe (2) de la présente Loi prévoit que:

(2) Cette permission doit être demandée avant l'interrogatoire de ceux des experts qui peuvent être interrogés sans permission.

On propose que le paragraphe (2) soit abrogé. En d'autres termes, la permission d'appeler des témoins au-delà des cinq permis par un juge en aucun temps durant la procédure, sous réserve bien entendu de la discrétion du juge.

La section de Droit criminel de la Conférence des commissaires sur l'uniformité de la législation au Canada a recommandé cette modification dès 1960 et l'a réaffirmée en 1966. On a fait entendre aux commissaires que si on ne se conformait pas aux exigences techniques prescrites dans le présent paragraphe (2) de l'article 7, cela pourrait parfois risquer des erreurs judiciaires sérieuses. Je crois que le tribunal ne pouvait pas entendre tous les témoignages pertinents.

Dans la cause du Roi c. Barrs, en 1946, I.C.R. 301, il a fallu que la Division d'appel de la Cour suprême de l'Alberta annule une condamnation pour meurtre et d'ordonner un nouveau procès parce qu'on n'avait pas respecté les dispositions du paragraphe (2) de l'article 7. Le premier procès avait duré 15 jours. L'assemblée législative de l'Alberta a ainsi modifié la Loi sur la preuve de cette province en 1958; l'Ontario en a fait autant en 1960, et le Manitoba en 1965.

Le président: Est-ce qu'il y a des débats sur l'article 1? Monsieur Gilbert, s'il vous plaît?

M. Gilbert: Monsieur le président, voici une question d'ordre général que je voudrais poser au ministre. Est-ce que votre ministère et les procureurs généraux à travers le Canada ont cherché à établir une certaine uniformité dans la Loi sur la preuve au Canada, c'est-à-dire entre cette Loi et les autres lois provinciales?

[Texte]

Mr. Turner: We have been in informal negotiations with the Department of the Attorney General of Ontario to see whether we cannot have a joint study of the Ontario Evidence Act and the Canada Evidence Act so that the civil and criminal aspects of evidence and the procedural aspects could be made more uniform in criminal and civil trials.

That being so, we hope, by a general review of evidence, to be able, in a persuasive way, to have the other provinces join us so that we could have a uniform statute. We are reviewing that now.

As I mentioned in debate, the government has now approved in principle the setting up of a national law reform commission. I do not envisage being able to do this for another 12 months or so, because a great deal of research is required on how the Ontario commission is working, how the New York State commission is working, how the American Law Institute works, and how it is working in the United Kingdom. That might well be a subject for a national law reform commission.

In any event, as we move toward a general review of the Canada Evidence Act, which I believe is necessary—and I have said this in the House—I think we should try to achieve uniformity with the provinces so that the civil aspects could be made harmonious with ours.

M. Cantin: J'aurais aussi une question supplémentaire. Je crois que ceci ne peut pas s'appliquer à la province de Québec, en autant que le droit civil est concerné, parce que la province de Québec a sa propre Loi de la preuve et en vertu de la Constitution, vous savez que les droits civils sont exclusivement réservés à cette province. Alors, je pense que l'uniformité ne pourrait pas aller jusqu'à couvrir le cas de la province de Québec, au civil.

The Chairman: Are there any further questions? Mr. Gilbert?

Mr. Gilbert: Mr. Turner, why the limitation on the number of witnesses to be called and why the discretion to be vested in the judge?

Mr. Turner: Historically, Mr. Gilbert, the reason was to prevent trials from getting completely out of hand and to see that the Crown or the accused did not prolong the trial unnecessarily by calling an unlimited number of professional witnesses.

I would also suggest to you that it might be very unfair to the accused if the prosecution, with the force of the state behind it, were to be able to call an unlimited number of witnesses whom the accused was not able to meet. Therefore, the number of five is an

[Interprétation]

M. Turner: Nous sommes engagés dans des discussions officielles avec le procureur général de l'Ontario, pour voir si nous ne pourrions pas étudier ensemble la Loi sur la preuve en Ontario et la Loi sur la preuve au Canada, afin que les aspects civils et criminels de la preuve et la procédure soient uniformisés. Nous espérons aussi pouvoir convaincre les autres provinces de se joindre à nous de façon que la Loi puisse être uniforme d'un bout à l'autre du pays. Nous sommes en train de revoir la question.

Je disais au cours du débat que le gouvernement a approuvé en principe la constitution d'une commission nationale de réformes juridiques. Je n'envisage pas pouvoir créer cette commission avant 12 mois. Il faudra entreprendre de nombreuses recherches, par exemple, sur la façon dont la commission ontarienne fonctionne et dont les commissions analogues dans l'État de New-York, aux États-Unis et dans le Royaume-Uni fonctionnent. Quoi qu'il en soit, au fur et à mesure que nous nous mettons à reviser la Loi sur la preuve au Canada, et la chose me paraît nécessaire, je crois qu'il nous faut tenter d'atteindre l'uniformité entre les régimes provinciaux et fédéral.

Mr. Cantin: I also have a supplementary question. This, I believe cannot apply to the Province of Quebec in so far as the civil law is concerned. The Province of Quebec has its own Evidence Act and under the Constitution you know that civil rights are a matter of exclusive provincial jurisdiction. Therefore, I hardly think that uniformity can be such as to cover the case of the Province of Quebec, at least in its civil aspects.

Le président: Y a-t-il d'autres questions? Monsieur Gilbert?

M. Gilbert: Le ministre me dirait-il pourquoi on a limité le nombre des témoins et pourquoi ce pouvoir a été confié au juge?

M. Turner: La raison historique c'est qu'on ne voulait pas que les procès s'éternisent et qu'on ne voulait pas voir l'une ou l'autre partie prolonger indéfiniment les débats devant le tribunal en convoquant un nombre infini de témoins. Il serait peut-être injuste pour l'accusé si la poursuite pouvait citer un nombre infini de témoins, ce qui serait impossible pour l'accusé. Le chiffre cinq est un chiffre arbitraire. Il appartient ensuite au juge de décider.

[Text]

arbitrary one, and beyond that number the discretion of the judge is necessary.

• 1115

Mr. Gilbert: It states, "without the leave of the court or judge" and it does not specify when. The old Act provided that one had to move at the commencement of the trial for the calling of additional professional or expert witnesses. That is not now specified. Is there a problem there? Must counsel move at the commencement of the trial, or can he move at any time?

Mr. Turner: We think that the elimination of subsection (2) would mean that either side could make an application to the judge at any time during the course of the proceedings.

Mr. Gilbert: That is all, Mr. Chairman; thank you.

Mr. Gibson: Quite frequently, Mr. Turner, a very important medical or technical issue, unforeseen at the commencement, can be raised in a trial. Will this amendment not alleviate that situation?

Mr. Turner: Exactly.

The Chairman: Are there any further comments? Mr. Chappell?

Mr. Chappell: I am inclined to think that for greater clarity—and I offer this only as a suggestion—you might consider adding the words "which leave may be given at any time during the trial or other proceedings".

The reason I bring that up is that in 1963 or 1964, after the same amendment was made in the Ontario Evidence Act, in a trial in which I was appearing, the other side objected when I made the request during the trial. As it turned out, the judge supported my stand and he allowed it.

I can give that decision to Mr. Christie later today if he wishes to refer to it. I think it may save some uncertainty and some future arguments if those words were added to the section.

Mr. Turner: Perhaps Mr. Scollin might like to comment.

Mr. J. A. Scollin (Director, Criminal Law Section, Legal Branch, Department of Justice): The formula "with leave of the court" is used in other areas without specifying exactly when it may be given. It does seem to me that it is absolutely clear if it says "leave of the court". Unless there is a restriction on when that leave may be given it may be given at any time that application is made.

[Interpretation]

M. Gilbert: Le texte dit: «sans la permission de la cour ou du juge». Dans l'ancienne loi on disait qu'il fallait présenter cette motion au début du procès, en ce qui concerne la convocation de témoins experts. On ne dit plus rien de tel dans la nouvelle loi. Est-ce que l'avocat doit présenter cette motion au début du procès ou peut-il la présenter à n'importe quel moment?

M. Turner: Nous pensons que la disparition du paragraphe B veut dire que l'une ou l'autre des parties en cause pourra présenter une demande au juge à n'importe quel moment des débats.

M. Gilbert: C'est tout, Merci.

M. Gibson: Dans un procès, on peut soulever des aspects médicaux, par exemple, qui n'ont pas été prévus. Est-ce que ça n'est pas fait, justement pour prévoir ces cas-là?

M. Turner: Précisément.

Le président: D'autres commentaires? Monsieur Chappell?

M. Chappell: J'incline à croire (mais ce n'est qu'une suggestion) qu'on pourrait peut-être ajouter les mots: «une autorisation peut être donnée à n'importe quel moment au cours des débats.»

Je soulève la question parce qu'en 1963 ou 1964, après que ce même amendement fut apporté à la Loi de la preuve en Ontario, la partie adverse dans un procès où j'étais impliqué, s'est objectée lorsque j'ai fait une demande en ce sens au cours du procès. Le juge a accepté ma demande. Je pourrai communiquer cette décision, plus tard, à M. Christie, s'il désire la consulter. Je pense qu'on pourrait faire disparaître certaines incertitudes si on ajoutait ces mots à l'article en question.

M. Turner: M. Scollin aurait peut-être quelque chose à dire là-dessus.

M. J. A. Scollin (Directeur, Section du droit criminel, Direction juridique, Ministère de la Justice): La formule «avec l'autorisation du tribunal» est utilisée ailleurs et rien n'indique le moment où cette autorisation doit être donnée. Il me semble qu'il est absolument clair que cette permission du tribunal peut être donnée à n'importe quel moment si, justement, on ne précise pas ce moment.

[Texte]

Mr. Chappell: I thought that and argued that, and the argument went on for about a half a day; and the judge reserved for about two days. He upheld that view. I expect, however, that that argument will be made again in the future. I thought that if the words were added it would avoid the need for the argument.

In any event, I will send the case along. If you are impressed with it you might consider making that addition.

Mr. Blair: Mr. Chairman, I suppose the problem is that if you insert these words in this section and they do not appear in others, doubt will arise about the operation of the other sections.

Mr. Turner: It is a question of balancing the other sections of the Act for leave when such an application is made to a judge.

Mr. L. Alexander: I merely wish to comment on what the first speaker said about this matter. I think the answer given by the Minister clarifies what the situation would be but I would much prefer to see that statement added so as to reduce any ambiguity about when counsel can make such application.

However, in view of that last statement and what you have said I think you will have to go through the whole bill and balance it.

The Chairman: Are there any further comments on clause 1?

Clause 1 agreed to.

On Clause 2—*Previous statements in writing by witness not proved adverse.*

• 1120

Mr. Turner: Mr. Chairman, section 9 of the present Canada Evidence Act prohibits a party producing a witness from impeaching the credit of that witness unless in the opinion of the court the witness proves to be adverse or hostile; and for the purpose of establishing that a witness that a party calls is adverse or hostile, that witness cannot at the moment be cross-examined on any previous inconsistent statement made by him.

Therefore, it is proposed to add a new subsection (2) to section 9 of the Act, whereby it will be possible, with leave of the court but without establishing first that a witness is adverse, to cross-examine one's own witness on any previous inconsistent statement that has been reduced to writing.

[Interprétation]

M. Chappell: C'est ce que j'avais cru. C'est ce que j'avais prétendu. J'ai plaidé ce point pendant au moins une demi-journée puis le juge a réservé sa décision pendant deux jours. Il a abondé en ce sens. L'argument sera certes encore soulevé. Je croyais que l'addition de ces mots éliminerait toute possibilité d'argument. Quoi qu'il en soit, je vais vous envoyer la documentation à ce sujet.

M. Blair: Si ces mots figurent à cet article-ci seulement, l'interprétation donnée aux autres articles pourrait prêter à confusion.

M. Turner: Il faut que cet article concorde avec les autres, à ce sujet.

M. L. Alexander: Je pense que la réponse donnée par le ministre clarifie la situation mais je préférerais qu'on ajoute une précision de ce genre de façon à dissiper toute ambiguïté éventuelle, quant au moment où l'avocat peut demander cette permission de faire comparaître ses témoins experts. Mais en raison de votre dernière déclaration il faudrait apporter la même addition partout dans ce projet de loi.

Le président: Avez-vous d'autres questions?

L'article 1 est adopté.

Les déclarations écrites faites antérieurement par un témoin qui n'a pas été jugé défavorable.

M. Turner: L'article 9 de la loi actuelle interdit à une partie qui produit un témoin de mettre en doute la crédibilité du témoin, à moins que, de l'avis du tribunal, ce témoin soit considéré hostile à la partie adverse. Pour établir que le témoin est effectivement hostile, ce témoin ne peut, présentement, être contre-interrogé sur ses déclarations antérieures. C'est pourquoi nous désirons ajouter un nouveau paragraphe à l'article 9. Il serait alors possible, avec la permission du tribunal, mais sans établir à l'avance si un témoin est hostile, de contre-interroger ses propres témoins sur des déclarations antérieures qui semblent contradictoires et qui ont été mises par écrit.

[Text]

And the court may consider such cross-examination in determining whether in fact the witness is adverse or hostile.

In other words, the court will still be able to weigh the demeanour of the witness, or the attitude of the witness, or the bearing of the witness, but it will also now be able to refer to this cross-examination on a previous inconsistent statement reduced to writing.

The proposed amendment relates not only to statements made in writing by the witness, or signed by him, but also to statements made by the witness and reduced to writing by some other person—a stenographic record.

Representations in support of this proposed amendment have been received from the Manitoba and Saskatchewan association of The Canadian Bar Association. In addition, the following resolution was passed by The Canadian Bar Association at its annual meeting on September 9, 1967:

WHEREAS there appear to be conflicting decisions as to whether a party may put to his witness a prior inconsistent statement until after a ruling of adverseness has been made by the Court;

RESOLVED:

that Section 9 of the Canada Evidence Act be amended to provide (a) that by leave of the Court a party might cross-examine his witness as to prior inconsistent written statements before a finding of adverseness; (b) that such examination might be used by the Court in determining whether a witness is adverse.

The Chairman: Are there any comments? Mr. McQuaid?

Mr. McQuaid: Mr. Chairman, I agree with the general purpose of the section, but is enough protection being afforded here to the witness? It says "Where the party producing a witness alleges that the witness made... a statement". Should not some provision be put in there requiring more than an allegation? After all, this is a statement in writing. Should there not be a requirement that the statement be produced?

Mr. Hogarth: It is.

Mr. McQuaid: It does not say so, does it?

[Interpretation]

Le tribunal pourra utiliser ce contre-interrogatoire pour déterminer si oui ou non le témoin est hostile. Autrement dit, le tribunal pourra toujours apprécier l'attitude et le comportement du témoin. Le tribunal bénéficiera de ce contre-interrogatoire qui aura porté sur des déclarations antérieures contradictoires.

Il s'agit ici, dans cet article, non seulement de déclarations faites par écrit par le témoin et signées par lui, mais des déclarations faites par le témoin et mises par écrit par une tierce personne. Par exemple, un compte rendu sténographique. Les associations du Manitoba et de la Saskatchewan de l'Association du Barreau du Canada appuient cet amendement. En outre, la résolution suivante a été adoptée par l'Association du Barreau du Canada lors de sa réunion annuelle du 9 septembre 1967:

CONSIDÉRANT que des décisions contradictoires semblent avoir été prises au sujet de la possibilité, pour une partie, d'interroger ses propres témoins au sujet d'une déclaration antérieure contradictoire tant que le Tribunal ne s'est pas prononcé sur l'hostilité du témoin;

IL EST RÉSOLU:

que l'article 9 de la Loi sur la preuve au Canada soit amendé afin de permettre (a) qu'avec la permission du tribunal une partie puisse contre-interroger son témoin au sujet de déclarations antérieures contradictoires, mises par écrit, avant que le tribunal ne se prononce sur son hostilité; (b) que ce contre-interrogatoire puisse servir au tribunal pour établir l'hostilité ou la non-hostilité du témoin.

Le président: Quelqu'un a-t-il des observations?

M. McQuaid: Je suis d'accord, mais est-ce que l'article accorde assez de protection au témoin? Le texte dit: «Lorsque la partie qui produit un témoin allègue que le témoin a fait une déclaration». Est-ce qu'il ne pourrait pas y avoir d'autres dispositions, disons, plus qu'une allégation? Est-ce que la déclaration écrite ne devrait pas être produite obligatoirement?

M. Hogarth: Mais elle l'est.

M. McQuaid: Mais on ne le dit pas. On parle seulement d'une allégation. Je pense qu'il faudrait que la déclaration en cause soit produite en preuve et versée aux dossiers du procès. Alors vous aurez établi qu'il a fait cette déclaration. Je trouve dangereux qu'on

[Texte]

Mr. Hogarth: How could one cross-examine on the statement if one did not have it?

Mr. McQuaid: All you have to do is allege that he made a statement and then cross-examine him on whether or not he made it. First of all, I think that the statement should be required to be produced in evidence; you have then established that he has made the statement in writing. I consider it rather dangerous just to allow that assumption to be made—to allege that he made the statement, go no further and then say, “Now we want permission to cross-examine him”.

Mr. Turner: Mr. McQuaid, perhaps I should ask Mr. Scollin to refer to section 10 of the Act. It might clarify the point.

Mr. Scollin: Sections 10 and 11 are both relevant. Section 10, subsection clause (1) states:

Upon any trial a witness may be cross-examined as to previous statements made by him in writing, or reduced to writing, relative to the subject-matter of the case, without such writing being shown to him; but, if it is intended to contradict the witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing that are to be used for the purpose of so contradicting him; the judge, at any time during the trial, may require the production of the writing for his inspection, and thereupon make such use of it for the purposes of the trial as he thinks fit.

Mr. McQuaid: That takes care of it, Mr. Scollin.

Mr. Hogarth: Mr. Chairman, Section 9 deals with the party who is examining his witness in chief. That is the distinction between section 9 and section 10. Section 10 deals with a witness who is under cross-examination. Section 9 applies solely when you have called the witness yourself and you are confined to your examination in chief. But section 10 applies when the other party calls the witness and then you seek to cross-examine him on a previous statement.

One thing that I am concerned about relative to the new amendment to section 9 is that that section does not refer to written or oral statements.

[Interprétation]

puisse alléguer qu'il a fait une déclaration pour ensuite demander la permission de l'interroger à ce sujet.

M. Hogarth: Comment serait-il possible pour quelqu'un de mener un interrogatoire s'il n'a pas la déclaration en main?

M. McQuaid: Vous n'avez qu'à prétendre qu'il a fait une déclaration puis l'interroger pour savoir s'il l'a faite ou non.

M. Turner: M. Scollin pourrait peut-être clarifier le tout à l'aide de l'article 10.

M. Scollin: Les articles 10 et 11 s'appliquent. Le paragraphe (1) de l'article 10 dit:

Lors de tout procès, un témoin peut être interrogé contradictoirement au sujet des déclarations antérieures qu'il a faites par écrit, ou qui ont été prises par écrit, relativement au sujet de la cause, sans lui exhiber cet écrit; mais si l'on entend mettre le témoin en contradiction avec lui-même au moyen de cet écrit, l'on doit, avant de pouvoir établir cette preuve contradictoire, appeler son attention sur les parties de l'écrit qui doivent servir à le mettre ainsi en contradiction; et le juge peut en tout temps, au cours du procès, exiger la production de l'écrit dans le but de l'examiner et en faire, dans la poursuite de la cause, l'usage qu'il croit convenable.

M. McQuaid: C'est fait. Je suis satisfait.

M. Hogarth: L'article 9 traite de la partie qui interroge son témoin. C'est la distinction qui existe entre les articles 9 et 10. L'article 10 parle du contre-interrogatoire. L'article 9 ne s'applique que dans les cas où une partie produit un témoin et est limitée au premier interrogatoire de ce témoin. L'article 10 s'applique, toutefois, aux cas où la partie adverse produit le témoin et que vous désirez le contre-interroger sur une déclaration antérieure.

[Text]

What is the position if we pass this clause? Perhaps you can help me on this. What is the position relative to the witness who has made a previous contrary oral statement?

[Interpretation]

• 1125

Mr. Scollin: It was felt that the impeaching of your own witness should be restricted to written statements, or statements reduced to writing, for much the same reasons as those advanced in an appeal to the Judicial Council of the State of New York. It was felt that if one were going to extend the right to prove inconsistent statements to oral statements, the evidence is relatively easily manufactured; that on the question of proof of adversity by restricting the means of proving adversity to written or oral statements reduced to writing, then there was a kind of guarantee that there was something in writing.

The feeling was that if you were going to prove previous inconsistent oral statements, what could possibly happen would be that the party producing the witness would, when the witness did not quite come up to his proof, call a halt to the trial and adduce a series of five or six people to say: "Oh, yes; I was in the bar or the saloon when I heard so-and-so say this," and then would produce another oral statement allegedly contradictory. This would result in a rather confused situation relative to previous oral statements. Whereas, if you have your statement in writing, or reduced to writing, you have a fairly firm base for saying to the court, "Here is what he said. Here it is in writing."

Mr. Hogarth: Because of the inclusion of subsection 2 of section 9 are you suggesting that parties would no longer be able to prove their witnesses adverse because of their having made a previous inconsistent oral statement?

Mr. Scollin: At the present time a party cannot prove his witness adverse by any previous statement at all. All he can do is contradict him by it. He just has to take his "lumps". If the witness does not give the evidence that he was expected to give, and the judge will not say that the witness' demeanour is sufficiently "fishy" as to warrant his being called adverse, then that is the end of that witness. The other party, of course, is perfectly entitled, as he is now—and, in fact, without leave, to contradict him by other evidence.

Mr. Hogarth: I appreciate that; but let us assume to begin with, that the judge is obviously prepared to come to the conclusion that the witness is not responding to proper examination in chief, is being hostile and is

M. Scollin: Il nous a semblé que nous devrions nous en tenir aux déclarations écrites ou prises par écrit pour ces mêmes raisons qui ont été invoquées lors d'un appel entendu par le *Judicial Council* de l'État de New-York. Il serait trop facile d'inventer des preuves si on admettait les contradictions aux déclarations orales. Pour prouver l'hostilité, il nous a semblé qu'en limitant la preuve aux déclarations écrites ou prises par écrit, existait une certaine garantie de preuve écrite.

Pour prouver l'existence de déclarations orales antérieures contradictoires, il aurait suffi de suspendre les délibérations du tribunal pour appeler 5 ou le témoin prêts à déclarer: «J'étais à tel endroit et j'ai entendu X déclarer ceci.» Et ainsi de suite. Ce qui ne ferait qu'embrouiller la situation. Tandis que si vous vous limitez aux déclarations écrites ou mises par écrit, vous pouvez dire au tribunal: «Voilà ce qu'il a dit, je l'ai par écrit.»

M. Hogarth: Est-ce que vous pensez qu'à cause de l'inclusion du nouveau paragraphe 2, que les parties ne pourront pas prouver que leurs témoins sont hostiles parce qu'ils ont fait des déclarations orales contradictoires?

M. Scollin: Il est présentement impossible de déclarer un témoin hostile en se basant sur ses déclarations antérieures. Il ne peut qu'être contredit. Si le témoin ne donne pas les renseignements attendus, et que le juge n'est prêt à le déclarer hostile, c'en est fait de ce témoin. La partie adverse pourra, comme elle le peut maintenant, le contredire à l'aide d'autres preuves.

M. Hogarth: Je comprends cela. Mais supposons que le juge en vient à la conclusion que le témoin ne répond pas convenablement au premier interrogatoire, qu'il est hostile, qu'il cache une partie de la vérité. Est-ce que

[Texte]

holding something back. Is it your suggestion that if the judge says he is hostile you can no longer establish that hostility before the jury by the use of prior inconsistent oral statements?

Mr. Scollin: Not in cross-examination.

Mr. Hogarth: Of course it is the cross-examination you are after.

Mr. Scollin: Once the witness has been declared adverse—and you would now be able to establish that by using his previous inconsistent written statement in cross-examining him—then the party calling him is entitled to use any previous statement, whether oral or written.

Mr. Hogarth: You have cleared up my point. I was afraid that subsection 2 might lead the courts to believe that the only previous statements that could be used after the proof of hostility were written statements.

Mr. Scollin: No. You are then into the area of ordinary cross-examination and sections 10 and 11 of the Act come into play.

The Chairman: Mr. Gibson?

Mr. Gibson: Relative to the phrase “reduced to writing”, would a tape recording of an oral statement, subsequently reduced to writing qualify under this section?

Mr. Scollin: Yes, I think so. If the statement on the tape is the statement made by the person, it does not matter whether it is directly or indirectly reduced to writing.

Mr. Gervais: You are asking for a judgment.

Mr. Gibson: I can foresee the courts arguing about this for three or four years. I thought perhaps we could clarify it.

Mr. Turner: We may have something to say about taped evidence at a later stage.

The Chairman: Mr. Gilbert?

Mr. Gilbert: I wish to direct a question to the Minister.

The key words are “a statement in writing, or reduced to writing”. From my experience it is very seldom that the investigating detective has the witness sign the statement that he obtains from the witness. Perhaps this will start a new practice of having the detective have the Crown witness sign a statement.

[Interprétation]

vous affirmez que, si le juge déclare le témoin hostile, vous ne pouvez plus établir cette hostilité devant le jury en utilisant des témoignages oraux préalables contradictoires?

M. Scollin: Pas au cours du contre-interrogatoire.

M. Hogarth: Évidemment, vous parlez du contre-interrogatoire.

M. Scollin: Mais une fois que le témoin a été déclaré hostile (ce que vous pouvez établir en utilisant, au cours du contre-interrogatoire, ses déclarations écrites antérieures), la partie qui a produit ce témoin peut utiliser toute déclaration préalable, qu'elle soit écrite ou orale.

M. Hogarth: Bon, je comprends. Je craignais qu'à cause du paragraphe 2, le tribunal ne soit porté à croire que les seules déclarations admissibles après l'établissement de la preuve d'hostilité, sont les déclarations écrites.

M. Scollin: Non, il s'agit ici d'un contre-interrogatoire normal aux termes des articles 10 et 11 de la loi.

Le président: Monsieur Gibson.

M. Gibson: Revenons à l'expression «prise par écrit». Est-ce que la transcription d'une déclaration orale enregistrée sur ruban magnétique serait considérée comme une déclaration écrite?

M. Scollin: Je le crois. Si la déclaration faite sur le ruban est bien de cette personne, peu importe qu'elle ait été directement ou indirectement prise par écrit.

M. Gervais: Ce qui signifie que quelqu'un devra porter un jugement.

M. Gibson: Les tribunaux vont discuter ce point pendant trois ou quatre ans avant de trancher la question. Pourquoi ne pas clarifier la situation dès maintenant?

M. Turner: Nous aurons peut-être quelque chose à ajouter, plus tard, au sujet des déclarations enregistrées.

Le président: Monsieur Gilbert.

M. Gilbert: Je voudrais poser une question au ministre. Les mots clés sont: «une déclaration écrite ou prise par écrit». Mon expérience me permet de dire que le détective qui enquête fait rarement signer aux témoins la déclaration qu'il a obtenue d'eux. Il se peut que cela implante une nouvelle habitude, que le détective demande au témoin de la couronne de signer sa déclaration.

[Text]

[Interpretation]

• 1130

Mr. Turner: It does not have to be signed.

M. Turner: Il n'est pas nécessaire qu'elle soit signée.

Mr. Gilbert: But it would not be the statement of the witness; it would be the statement of the detective, would it not?

M. Gilbert: Ce ne serait pas la déclaration du témoin, mais plutôt celle du détective?

Mr. Turner: It is the witness' statement reduced to writing by the detective. It would not serve as a confession, or anything like that. It would only be admissible relative to the question of hostility, or adversity.

M. Turner: C'est la déclaration du témoin prise par écrit par le détective. Il ne s'agirait pas d'une confession mais d'un document susceptible d'aider à établir s'il y a hostilité ou non.

Mr. Gilbert: My second question, Mr. Turner, relates to evidence on a preliminary hearing. Undoubtedly the Crown has had the experience of holding a preliminary hearing, having one of its witnesses give a certain story and then finding when the case goes to trial, that there is an inconsistency between what that witness said at the preliminary hearing and what he is saying at the trial.

M. Gilbert: Une autre question, monsieur le ministre, au sujet des témoignages reçus lors de l'enquête préliminaire. Il est sans doute arrivé à la Couronne de tenir une enquête préliminaire et de voir l'un de ses témoins déclarer une chose lors de cette enquête et d'en déclarer une autre lors du procès.

Is this section designed to avoid these inconsistencies? In other words, can the Crown witness be confronted with the evidence he gave at the preliminary hearing on this?

Cet article est-il inclus pour éliminer ces contradictions. Est-ce que le témoin de la Couronne peut-être confronté avec ce qu'il a dit à l'enquête préliminaire?

Mr. Scollin: Yes, indeed; but just as frequent use is made of it by defence counsel. Inconsistencies preliminary to the trial are made use of by both sides; but this would enable Crown counsel to put to the Crown witness at the trial the previous statement at the preliminary hearing.

M. Scollin: Évidemment. Et l'avocat de la défense s'en sert aussi souvent. Les deux parties utilisent ces contradictions à leurs propres fins.

Mr. Hogarth: If he first proved hostile.

M. Hogarth: Si le témoin a déjà été déclaré hostile.

Mr. Scollin: That is so; and in the course of proving him hostile, or adverse.

M. Scollin: C'est exact. Et aussi, pour établir s'il est hostile ou non.

Mr. Turner: It could equally well be used by counsel for the accused if he had called a witness at a preliminary hearing and then the fellow let him down at the trial, or the Crown had got to the witness in the meantime.

M. Turner: Cela pourrait être utilisé également par l'avocat du prévenu s'il décide de convoquer des témoins à l'enquête préliminaire et ensuite au procès.

Mr. Gilbert: I think experience shows that it is weighted more in the favour of the Crown, Mr. Turner, than of the accused.

M. Gilbert: Je crois qu'il arrive plus souvent que la Couronne s'en serve.

Mr. Turner: On a preliminary enquiry, because the Crown tends to call the witnesses.

M. Turner: A une enquête préliminaire, oui, parce que c'est habituellement la Couronne qui convoque les témoins.

Mr. Gilbert: That is right.

M. Gilbert: C'est vrai.

Mr. Alexander: Mr. Chairman, defence counsel in a criminal trial has a very difficult job at the moment. It appears to me that by this particular statement you are making it much more onerous than it was previously. It

M. Alexander: Monsieur le président, l'avocat de la défense a déjà la tâche difficile dans un procès au criminel. Cette déclaration, il me semble fait que sa tâche sera plus difficile encore. Certaines normes ont été établies pour

[Texte]

has been well elaborated by setting up certain standards for a preliminary hearing. There is preliminary hearing and the Crown attorney calls his witness. In the event that things just do not happen as he thought they would after the preliminary hearing I can see a whole raft of witnesses being called and being called adverse—thereby, in appearance, immediately strengthening the Crown's case. What are we seeking to do here? That is the main point.

Mr. Turner: What we are going to do in this section, as in every other section, is to allow the court to assess in a probative way the value of the evidence.

This section is open to both the accused and the Crown. It may be that, as a preliminary enquiry is conducted and because of its *prima facie* nature, the Crown will necessarily call more witnesses; and it may be that the Crown will have occasion to use this section more than does the defence; but it is equally open to the defence.

Its only purpose is to allow the judge to assess the credibility of any witness. That is all. It is not a game between the prosecution and the defence. The Crown attorney is not going to enjoy using it, because, after all, he calls the witness and then he has to destroy him. No Crown attorney is consciously going to want to use this section.

Clause 2 agreed to.

On Clause 3—*Copies of entries.*

• 1135

Mr. Turner: On pages 1, 2, 3 and 4 of the bill before you the proposed amendments are to sections 1, 2, 3, 5 and 6 of section 29 of the Act, and the section which you will find in the explanatory note of the Bill is simply to substitute the phrase "financial institution" for the word "bank" where the latter appears in these subsections. In other words, the purpose of the amendment, relative to the production of records, is to extend to other financial institutions the present rule as it now applies to banks.

The proposed amendment to subsection 7, which you will find at the bottom of page 3, deletes the word "bank" and defines "financial institution", and that definition is to be found in the last two lines on page 3 in subsection (ba):

"(ba) "financial institution" means the Bank of Canada, the Industrial Development Bank and any institution incorporated in Canada . . .

—that is, not under the laws of Canada but incorporated in Canada—

[Interprétation]

la tenue des enquêtes préliminaires. L'enquête a lui et la Couronne convoque ses témoins. Si tout ne se déroule pas comme prévue, il ne serait pas impossible de voir surgir, au procès, quantité de témoins, qui pourraient être déclarés hostiles, ce qui renforcerait la position de la Couronne. Quel but voulons-nous atteindre?

M. Turner: Nous voulons, grâce à cet article et à tous les autres articles, permettre au tribunal de déterminer la valeur des témoignages. Cet article vaut tout autant pour l'accusé que pour la Couronne. A cause de la nature même des enquêtes préliminaires, il se peut que plus de témoins soient appelés par la couronne. Il est peut-être vrai que la Couronne aura davantage l'occasion de se servir de cet article que la défense, mais il est accessible également à la défense.

Son seul but est de permettre au juge d'établir la crédibilité du témoin. C'est tout. Ce n'est pas un jeu entre la Couronne et la défense. Le procureur de la Couronne ne l'utilisera pas pour le simple plaisir de la chose. Il ne tiendra pas, coûte que coûte, à utiliser cet article.

L'article 2 est adopté.

L'article 3: *Copies des inscriptions.*

M. Turner: Cet article—si vous voulez regarder les pages qui vous permettront de vérifier, messieurs: 1, 2, 3 et 4, les amendements en ce qui concerne les articles 1, 2, 3, 4 et 5, 6 de l'article 29 de la Loi—vous trouvez des notes explicatives du projet de loi. Il s'agit simplement de substituer les mots «institution financière» au mot «banque» chaque fois que ce dernier mot apparaît dans l'article.

Le but en somme de la modification en ce qui concerne la reproduction des dossiers est de remplacer le terme «banque» par «institution financière». A la page 3 par exemple, au bas de la page, on trouve:

«institution financière» signifie la Banque du Canada, la Banque d'expansion industrielle et toute institution constituée en corporation au Canada. . .

non pas aux termes de la loi fédérale mais constituée en corporation au Canada,

[Text]

...that accepts deposits of money from its members or the public, and includes a branch, agency or office of any such Bank or institution."

The purpose of these proposed amendments is to enlarge the applicability of the provisions of section 29 to include other financial institutions such as credit unions, and so on. The amendment was specifically requested by the Credit Union League of Saskatchewan.

The purpose of the proposed amendment to subsection (4) of section 29, which you will find on page 2, is to make it clear that it is not necessary to call a witness to give evidence that the signature of an affidavit referred to therein is in fact the signature of the manager or accountant of the financial institution from which the evidence is being obtained.

On page 3 you will find a new subsection (6a) which is being added to section 29. The purpose of this is to provide that a search warrant, if expressly endorsed to the effect by the person who issues it, may be used to search the premises of financial institutions.

The reason for the addition of this subsection is the recent case of the Queen against Mowat, *ex parte* Toronto Dominion Bank (1968) 2 C.C.C. 374, in which Mr. Justice Lacourcière of the Supreme Court of Ontario said that a bank which is neither suspected of an offence under the Criminal Code nor party to a criminal prosecution is not subject to the authority of a search warrant, issued by a Justice of the Peace pursuant to section 429 of the Criminal Code, for the purpose of facilitating the search for, and the seizing of, relevant books of accounts, correspondence and other records of certain of the bank's clients suspected of having committed theft.

By section 29 subsection (5) of the Canada Evidence Act, which is expressly made applicable to criminal proceeding, a bank cannot be compelled to produce the originals of books of accounts and records, the contents of which can be proved under section 29, unless by order of the court made for some special cause.

In my opinion of Mr. Justice Lacourcière the specific exemption of the Canada Evidence Act takes precedence over, and qualifies, under circumstances, the more general provisions of the Criminal Code. The purpose of this subsection is to re-establish the ability to search.

It should be noted that subsection (6) of section 29 requires a party to a legal proceeding who seeks a court order to inspect and take copies of any entries in the books or records of a bank to give the person whose account is to be inspected notice of the

[Interpretation]

...qui accepte des dépôts d'agent de ses membres ou du public et comprend une succursale et une agence ou un bureau d'une telle banque ou institution.

Le but de ces modifications est d'étendre l'applicabilité de l'article 29 à toutes les institutions financières: caisses populaires, etc. Cet amendement a été demandé par l'union des coopératives de crédit de la Saskatchewan.

Au paragraphe 4 que vous trouverez à la page 2, dans l'article 29, il est bien précisé qu'il n'est pas nécessaire de citer un témoin à la barre et que la signature sur une déclaration assermentée suffit, la signature du directeur de l'institution financière. Ensuite il y a un nouveau sous-alinéa (6a) que l'on ajoute à 29. Le but est de disposer qu'un mandat de perquisition pourra être utilisé pour procéder à une perquisition dans les locaux d'une institution financière.

Dans un cas récent, Regina c. la Reine vs. Mowat, Toronto Dominion Bank 1968, 2 C.C.C. 374, M. le juge de la Cour suprême de l'Ontario dit qu'une banque qui n'est pas soupçonnée d'un délit aux termes de la loi n'est pas sujette à l'autorité d'un mandat de perquisition délivré aux termes de l'article 424 du Code criminel, qui dispose que l'on pourra perquisitionner dans les dossiers de la compagnie pour établir la culpabilité de quelqu'un qui est soupçonné d'un vol.

Aux termes de l'article 29, c'est la loi sur la preuve au Canada qui est applicable aux procédures au Criminel la banque n'est pas obligée de produire les originaux des comptes de ses dossiers dont le contenu peut être confirmé aux termes de l'article 29, à défaut d'une ordonnance expresse du tribunal. De l'opinion de M. le juge Lacourcière, l'exemption prévue par la Loi sur la preuve au Canada a priorité sur les dispositions plus générales du Code criminel. Le but de cette disposition est de rétablir cette loi de perquisition.

On doit noter que l'article 29 exige de celui qui jouit d'une ordonnance à la Cour pour perquisitionner dans les dossiers d'une banque de donner à la personne chez qui on va perquisitionner un préavis de 48 heures. Cet avis n'est pas jugé convenable dans les procé-

[Texte]

application at least two clear days before the hearing thereof. Such a requirement is not considered appropriate in criminal investigations.

The underlying purpose, of course, of existing section 29 is to allow records of financial institutions now, or of banks in the earlier section, to be produced without having to subpoena the manager or the accountant of the bank and tying him up every time there is a proceeding and when he is not directly involved in the proceeding at all. All he was required to do was to produce records that related to a charge. The bank itself—the financial institution itself—is not party to the proceedings, and for the good order of business section 29 was originally instituted so that a bank—and now a financial institution—would not be tied up any time records were required.

Mr. Blair: Mr. Chairman, my comment will be brief. I think we should welcome this amendment. It removes an unintended discrimination which existed in the old law. As everybody knows, the growth of other financial institutions in the country has been very significant in the past few years, notably that of credit unions who accept deposits and now have quite a substantial share of the deposit-taking business.

In my opinion, this parliament would be commended if it made this amendment. It would be of great assistance, particularly to the credit unions, in the carrying on of their business.

Mr. Alexander: Mr. Chairman. We welcome these amendments and I am pleased to see that they are so clearly set out. They will do a lot to assist all such institutions in the situation in which records have to be produced in court.

I am, however, rather confused by subclause (4) on page 2 which states:

(4) Where proof is offered by affidavit pursuant to this section it is not necessary to prove the *signature* or official character of the person making the affidavit if the official character of that person is set out in the body of the affidavit.

Does that mean that the opportunity to cross-examine the person who has made the affidavit is lost? The affidavit is submitted, duly executed, giving his title or calling, and that is the end of the story? Can the department advise me what happens in the event that I wish to cross-examine on that affidavit?

[Interprétation]

dures au Criminel. Le but de l'article tel qu'il est sous sa forme actuelle est de permettre que les dossiers des vieilles institutions—des banques, si vous voulez, selon le texte primitif—puissent être produits sans qu'on ait à citer le directeur ou le gérant de la banque pour l'immobiliser chaque fois qu'il y a des procédures alors qu'il n'est pas directement intéressé. Il s'agit simplement pour lui de produire des dossiers. La banque ou l'institution financière elle-même n'est pas en cause, elle n'est pas «partie» en cause, et pour l'article 29, il était primitivement conçu de façon à ne pas immobiliser une banque—et maintenant une institution financière quelconque—pendant la durée du procès ou une durée notable du procès.

M. Blair: Mes commentaires seront brefs. Je crois que nous devons approuver cet amendement qui supprime une discrimination non voulue qui existait dans l'ancienne loi. Comme tout le monde le sait, le rôle des autres institutions financières a été très important ces dernières années, notamment la croissance des mutuelles de crédit qui ont maintenant une part importante des dépôts d'épargne de la population. Le Parlement mérite d'être félicité d'apporter cette modification qui aidera beaucoup les mutuelles de crédit en particulier dans leurs opérations. Merci.

M. Alexander: Nous approuvons certainement ces amendements. Je suis heureux que la Loi ait été clarifiée. Cela aidera passablement toutes les institutions qui acceptent des dépôts du public. Il n'est pas nécessaire que les dossiers soient produits devant le tribunal. Il y a peut-être un point qui n'est pas très clair: article 4 à la page 2, où il est question de déclarations assermentées:

Lorsque la preuve est produite sous forme d'affidavit en conformité du présent article, il n'est pas nécessaire de prouver la *signature* ou la qualité officielle de la personne souscrivant l'affidavit, si la qualité officielle de cette personne est énoncée dans le corps de l'affidavit.

Je me demande si l'occasion de contre-interroger, si la chance que nous avons de contre-interroger cette personne qui a présenté l'affidavit se trouve perdue par le fait même que désormais la soumission de l'affidavit dûment présenté est donnée à la fin. Je me demande si on ne pourrait pas me dire ce qui arrive si je veux contre-interroger le témoin sur cet affidavit.

[Text]

Mr. Turner: You can cross-examine. Sub-clause (5), Mr. Alexander, states:

(5) A financial institution or officer of a financial institution is not in any legal proceedings to which the financial institution is not a party compellable to produce any book or record, the contents of which can be proved under this section, or to appear as a witness...

—it is a question of convenience—

...to prove the matters, transactions and accounts therein recorded unless by order of the court made for special cause.

In other words, it is open to any party to say that he does not accept the affidavit and that he wishes to cross-examine the deponent of the affidavit.

Mr. Alexander: Thank you, Mr. Turner. That is the point in which I was particularly interested.

Mr. Turner: You can cross-examine on any document.

Clause 3 agreed to.

On Clause 4—*Business records to be received in evidence.*

Mr. Turner: Clause 4, Mr. Chairman, can be found on page 4. This is a new one; it is a new addition to the Canada Evidence Act.

The purpose of this proposed amendment is to overcome the difficulties imposed by the hearsay rule in relation to modern methods of keeping business records. The hearsay rule, generally speaking, means that one has to call the person who has the most direct knowledge of the matter in question, the evidence of which he is producing.

In the case of *Mayers* against the Director of Public Prosecutions in England (1964) 2 A. E.R. 881, the accused was convicted on counts of conspiracy in receiving stolen motor vehicles.

The evidence showed that when a car was manufactured a block number was indelibly stamped on the engine. When the car was completed a workman filled in a card showing the number allotted. The card was microfilmed and then destroyed after having been microfilmed. At the trial the judge permitted a witness, a person in charge of the records, to produce extracts of these microfilms for the purpose of proving that the cylinder block numbers of the cars in ques-

[Interpretation]

M. Turner: Vous pouvez le faire aux termes de l'article du paragraphe 5, celui qui suit:

Dans les procédures judiciaires auxquelles *l'institution financière* n'est pas partie, *l'institution financière* ou un officier de *l'institution financière* ne peut être contraint à produire un livre ou registre dont le contenu peut être prouvé sous le régime du présent article, ni de comparaître comme témoin afin de prouver les affaires, opérations et comptes y inscrits, sauf par ordonnance du tribunal rendue pour un motif spécial.

Il s'agit de choisir la meilleure solution pour...

...prouver les affaires, opérations et comptes y inscrits, sauf par ordonnance du tribunal rendue pour un motif spécial.

Une des parties peut dire qu'elle n'accepte pas l'affidavit et qu'elle veut interroger le témoin à ce sujet-là.

M. Alexander: Merci. C'est un point dont je n'étais pas tout à fait sûr.

M. Turner: Vous pouvez poursuivre l'interrogatoire au sujet de n'importe quel document.

L'article 3 est adopté.

Article 4—*Dossiers des entreprises à recevoir comme témoignages.*

M. Turner: On trouvera l'article 4 à la page 4. Il s'agit d'un article nouveau, que l'on ajoute à la loi sur la preuve au Canada. Cette modification vise à faire disparaître une difficulté imposée par la règle du oui-dire en ce qui concerne l'application de méthodes commerciales modernes. Généralement parlant, vous savez qu'il faut convoquer la personne intéressée qui connaît le plus directement la question qui fait l'objet de ce témoignage.

Dans le cas des poursuites de *Mayers* contre le directeur du ministère public en 1964, 2 A.E.R.881, le prévenu a été convaincu de culpabilité dans un cas de recel, le recel de voitures volées.

On a dit, par exemple, que lorsque les voitures étaient fabriquées, un numéro de série était gravé. Une fois qu'un microfilm avait été fait du chiffre de la série gravé, il était détruit. Les témoins avaient permis aux témoins chargés des assises de produire des extraits du microfilm. Le juge avait permis à un témoin, une personne chargée des dossiers, de produire des extraits du microfilm de façon à trouver que les numéros sur le bloc du cylindre des voitures en question

[Texte]

tion belonged to the stolen cars. He allowed the microfilm to be produced.

On the appeal before the House of Lords the Crown conceded that the evidence was hearsay, and the real issue was whether the categories of exception for the hearsay rule were closed.

By a majority of three to two it was held that they were not entitled to introduce this further exception to the rule. Lord Morris, at page 889, noted the practical argument in favor of the likelihood of accuracy of the records. This is what he said:

All this may suggest that some modification of the law could without dangerous consequences and with advantage be made. The existing exception to the hearsay rule which admits evidence of declarations in the course of duty is, however, subject to the firmly established condition that the death of the declarant must be shown. It would be a positive alteration of the law to say that the condition need no longer be satisfied.

In Nova Scotia, in the case of the Queen against Porter in 1965, 2 C.C.C. 294, the problem before the Supreme Court of Nova Scotia was the admissibility of telephone bill payment records, sought to be used by the Crown to disprove the accused's alibi relative to her movements on the day in question.

The records were classed as hearsay evidence and were said to fit none of the established exceptions to the hearsay rule. Therefore, applying Mayers case of the House of Lords, they were held to have been wrongly admitted in the court below.

Mr. Justice MacQuarrie made this comment on page 303:

We may assume that the reports probably are true, but that is not the basis upon which the question of their admissibility must be decided.

We had a further case in Canada, Warren against Superdrug Market Limited, 1965, 53 Western Weekly Reports, at page 25. It was an action for damages for wrongful dismissal.

At the trial the defendant company tendered certain of its books for the purpose of proving the hours of work for which various employees, including the plaintiff, were paid. No witness was produced who could swear that the records were correct and it was held by Mr. Justice Tucker of the Saskatchewan Court of Queen's Bench, again applying the Mayers case, that without some verification on oath that the records were correct they could not be accepted in evidence.

In other words, this is to allow documentary evidence in terms of the new methods of

[Interprétation]

appartenaient effectivement aux voitures volées. Il a permis la production du microfilm.

Lors de l'appel devant la Chambre des Lords la Couronne a admis qu'il s'agissait de oui-dire et qu'il s'agissait plutôt d'établir si les catégories d'exception au sujet de cette règle permettaient l'introduction de nouvelles exceptions. Le vote fut de 3 à 2 contre l'introduction de cette nouvelle exception à la règle. Lord Morris déclare ce qui suit, à ce sujet, à la page 889:

Ceci peut permettre de croire que certaines modifications pourraient être apportées à la loi qui n'entraîneraient aucun conséquence fâcheuse et auraient, au surplus, certains avantages.

L'exception qui existe à la règle du oui-dire et qui permet la déposition de déclarations est toutefois sujette à cette condition, savoir la preuve de la mort de celui qui l'a faite. Ce serait modifier la loi que de dire qu'il n'est plus nécessaire de respecter cette condition.

En Nouvelle-Écosse, le problème que devait résoudre la Cour suprême touchait l'admissibilité en preuve d'un relevé des appels téléphoniques que la Couronne désirait utiliser pour refuter l'alibi de l'accusée. Les documents ont été classés dans cette catégorie qui ne tombe pas sous le coup des règles d'exception à la règle du oui-dire. Il a donc été déclaré, en se basant sur la décision déjà prise par la Chambre des Lords, que la preuve était inadmissible. L'honorable juge McQuarrie déclare, à la page 303:

Nous pouvons croire à la véracité probable des déclarations, mais nous ne pouvons nous baser là-dessus pour décider de leur admissibilité.

Une autre cause du même genre s'est produite au Canada, Warren vs Superdrug Market Limited. Il s'agissait d'une action en dommages intentée pour congédiement illégal. Lors du procès, la défenderesse a soumis certains documents afin d'établir les heures de travail pour lesquels divers employés, dont le plaignant, avaient été payés. Aucun témoin n'a pu prouver que les documents étaient exacts de sorte que le juge Tucker, de la Cour du banc de la Reine de la Saskatchewan, a déclaré qu'il ne pouvait les accepter. En somme, il s'agit ici de permettre la communication de preuves documentaires en tenant compte des nouvelles méthodes de conservation des dossiers qui ont actuellement cours dans le monde des affaires.

[Text]

keeping records, by microfilm or computer, and so on—records kept in the ordinary and usual course of business.

[Interpretation]

The Chairman: Are there any comments?

Le président: Quelqu'un a-t-il des commentaires?

Mr. Gervais: Here again, Mr. Turner, I assume that the right to cross-examine is not deleted in any way.

M. Gervais: Je suppose qu'ici encore le droit de contre-interroger existe.

Mr. Turner: It is in there. It is subsection (9), subject to section 4...

—that is section 4 of the Act, of course, the compellability of spouses to give evidence against each other, and so on—

M. Turner: Oui. Il s'agit du paragraphe 9, sous réserve de l'article 4 de la Loi, et selon lequel les époux peuvent être contraints à témoigner l'un contre l'autre.

(9) Sous réserve de l'article 4, lorsqu'une personne a connaissance de l'établissement ou du contenu d'une pièce produite ou admise en preuve en vertu du présent article, ou lorsqu'on peut raisonnablement s'attendre à ce qu'elle en ait connaissance, cette personne peut, avec la permission du tribunal, être interrogée ou interrogée contradictoirement à ce sujet par tout partie à la procédure judiciaire.

If you do not accept the microfilms you can cross-examine on them.

Si vous n'acceptez pas ces microfilms, vous pouvez contre-interroger le témoin à leur sujet.

Mr. Alexander: I have one question. I take it that we are just dealing with records made in the usual and ordinary course of business?

M. Alexander: Il s'agit ici uniquement des dossiers établis selon la pratique qui a prévalentement cours dans le monde des affaires.

Mr. Turner: Yes, business.

M. Turner: Oui.

Mr. Alexander: Is there a definition of "business"?

M. Alexander: Est-ce qu'il y a une définition du mot «affaires».

Mr. Turner: Mr. Alexander, I will answer both your questions. There is a definition of "business" in subsection (12), which you will find on page 7:

M. Turner: Pour répondre aux deux questions à la fois, vous trouverez la définition du mot «affaires» au paragraphe 12, page 7:

(a) "business" means any business, profession, trade, calling, manufacture or undertaking of any kind carried on in Canada or elsewhere whether for profit or otherwise, including any activity or operation carried on or performed in Canada or elsewhere...

a) «affaires» désigne tout commerce ou métier ou toute affaire, profession, industrie ou entreprise de quelque nature que ce soit exploités ou exercés au Canada ou à l'étranger...

Relative to the first part of your question, yes, we are dealing with records made in the usual and ordinary course of business. Subsection (10) on page 6 states:

Pour ce qui est de la première partie de la question, oui il s'agit de dossiers établis selon les méthodes qui ont cours dans le monde des affaires. Et, si vous consultez à la page 6, le paragraphe 10:

(10) Nothing in this section renders admissible in evidence in any legal proceeding

(10) Rien au présent article ne rend admissible en preuve dans une procédure judiciaire

(a) such part of any record as is proved to be

a) un fragment de pièce, lorsqu'on a prouvé que le fragment est

(i) a record made in the course of an investigation or inquiry,

(i) une pièce établie au cours d'une investigation ou d'une enquête,

[Texte]

(ii) a record made in the course of obtaining or giving legal advice or in contemplation of a legal proceeding,...

In other words, it cannot be set up by a record. You have to prove that it was made in the ordinary and usual course of business without contemplation of a legal proceeding.

Of course you are also protected by

(iii) a record in respect of the production of which any privilege exists and is claimed,...

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In other words, the privilege applies.

Finally, it does not allow production of:

(iv) a record of or alluding to a statement made by a person who is not, or if he were living and of sound mind would not be, competent and compellable to disclose in the legal proceeding a matter disclosed in the record;

(b) any record the production of which would be contrary to public policy; or

(c) any transcript or recording of evidence taken in the course of another legal proceeding.

This limits it to records made in the usual and ordinary course of business.

Mr. Blair: May I raise a question about oral evidence which would ultimately stand behind this type of recording?

One might think of a situation such as that in the *Mayers* case wherein one employee records on some kind of a card the make of the car and the serial number; another employee takes the microfilm; and another employee destroys the original card.

In this proposed subsection (6), for example, the court may hear evidence in support of the written record, and in subsection (9) provision is made for cross-examination.

Am I right in thinking that it is contemplated that any person with a reasonable knowledge of how these documents are kept would be the appropriate person to be called either in direct examination or cross-examination?

Mr. Turner: You are right, Mr. Blair.

Mr. Hogarth: What Mr. Blair is getting at is that the affidavits contemplated in this section cannot state that the documents are kept in the usual course of business. A witness would have to be called to say that the documents referred to in the affidavit of another person were kept in the usual course of business.

[Interprétation]

(ii) une pièce établie au cours d'une consultation où l'on a obtenu ou donné des conseils juridiques ou établie en prévision d'une procédure judiciaire,

Il faut démontrer qu'il s'agit d'une opération ordinaire qui n'a pas été établie en vue d'une procédure judiciaire. Vous êtes également protégé par l'alinéa suivant:

(iii) une pièce relativement à la production de laquelle il existe un privilège dont on se prévaut.

Il n'est toutefois pas permis de produire:

(iv) une pièce reproduisant une déclaration ou faisant allusion à une déclaration faite par une personne qui n'est pas ou ne serait pas, si elle était vivante et saine d'esprit, habile et contraignable à divulguer dans la procédure judiciaire une chose divulguée dans la pièce;

b) une pièce dont la production serait contraire à l'ordre public; ou

c) une transcription ou un enregistrement de témoignages recueillis au cours d'une autre procédure judiciaire.

Il ne s'agit que des documents conservés selon les méthodes qui ont cours dans le monde des affaires.

M. Blair: Puis-je poser une question au sujet de déclarations orales antérieures à cette consignation? Imaginons le cas où un employé enregistre, sur une carte, la marque de l'automobile et son numéro de série; un autre employé enregistre le tout sur microfilm et un autre. D'après le paragraphe 6, le tribunal peut entendre des témoignages à l'appui de ce dossier écrit, et d'après le paragraphe 9, on prévoit le contre-interrogatoire. Ai-je raison de supposer qu'on prévoit que toute personne qui a une connaissance raisonnable de la façon dont ces documents sont conservés serait la personne appropriée qu'on pourrait convoquer pour un interrogatoire ou un contre-interrogatoire?

L'hon. M. Turner: Vous avez raison M. Blair.

M. Hogarth: Les dépositions certifiées dont il est ici question ne peuvent suffire pour établir que les documents sont conservés d'après les méthodes normales actuelles. Il faut convoquer donc un témoin pour jurer que les documents en question sont conservés selon la méthode en cours dans le monde des affaires.

[Text]

Mr. Scollin: Subsection (6) on page 5 deals with that. In effect, it allows the court to look at the record itself, and by so doing it can determine whether this section applies at all.

The court may examine the record and it can receive evidence relative to how the record is kept and made up; and that evidence can be given orally or by affidavit.

Mr. Hogarth: I appreciate that; but before any of the documents referred to in this section are admissible somebody must establish that they were kept in the usual course of business.

Mr. Scollin: Somebody, or the records themselves must show, because subsection (6) opens with the words

(6) For the purpose of determining whether any provision of this section applies, . .

which includes subsection (1), that is, the records made in the usual and normal course of business. Therefore, by looking at the record itself . . .

Mr. Hogarth: In the case of the microfilm of a car registration how would the court possibly know by looking at the document whether it was kept in the usual course of business unless a witness testified that that was the method of operation of the company?

Mr. Scollin: In that case you obviously need testimony of some sort, either oral or by affidavit. But if someone produces 14 years of hotel registers and the manner in which they are kept is apparent and proper, then the court can obviously look at them in determining whether they are kept in the ordinary course of business.

Mr. Hogarth: Do you not agree, then, that subsection (6) should say that explicitly—such as, that for the purpose of determining whether or not any of the records are kept in the usual course of business they may refer to the records themselves without hearing any oral testimony, or it may be included in an affidavit?

Mr. Turner: The court has to be satisfied. The words in the sixth line of subsection (6), Mr. Hogarth, are:

... the court may, upon production of any record, examine the record, receive any evidence in respect thereof given orally or by affidavit including evidence as to the circumstances in which the information contained in the record was written, recorded, stored or reproduced, and draw

[Interpretation]

M. Scollin: C'est ce dont parle le paragraphe 6. Le tribunal peut examiner le document et décider si l'article s'applique. Le tribunal peut examiner ces dossiers et recevoir ou pas les témoignages sur la façon dont les dossiers sont conservés. Ces témoignages peuvent être donnés oralement ou par écrit.

M. Hogarth: Sans doute, mais avant que les documents puissent être admis il faut que quelqu'un prouve qu'ils sont conservés selon les méthodes qui ont cours dans le monde des affaires.

M. Scollin: Quelqu'un, en effet, doit le faire puisque le paragraphe 6 commence ainsi:

(6) Aux fins de déterminer si l'une quelconque des dispositions du présent article s'applique . . .

Ce qui inclut le paragraphe (1) où il est dit:

(1) Lorsqu'une pièce établie dans le cours ordinaire des affaires

M. Hogarth: Mais comment est-ce que le tribunal sait si, dans le cas, par exemple, de l'enregistrement d'une automobile sur microfilm, si la méthode utilisée était la méthode normalement utilisée à moins que quelqu'un vienne déclarer qu'il s'agissait bien de la méthode utilisée par la compagnie?

M. Scollin: Bien entendu, il faut un certain témoignage oral ou un témoignage assermenté par écrit.

Si quelqu'un par exemple soumet les documents d'un hôtelier, documents qui échelonnent sur une période de 14 ans, et que la méthode utilisée est visible, le tribunal n'a qu'à les examiner pour savoir s'ils sont établis selon les méthodes qui ont cours.

M. Hogarth: Est-ce que vous ne pensez pas que le paragraphe (6) devait préciser, par exemple, qu'aux fins de déterminer si oui ou non les pièces sont établies dans le cours ordinaire des affaires? On pourrait se référer aux documents sans invoquer de témoignages oraux ou on peut l'inclure dans un affidavit.

M. Turner: Le tribunal doit être satisfait. Les termes du paragraphe (6) à la sixième ligne, monsieur Hogarth, sont les suivants:

... le tribunal peut, sur production d'une pièce, examiner celle-ci, recevoir toute preuve à son sujet fournie de vive voix ou par affidavit, y compris la preuve des circonstances dans lesquelles les renseignements contenus dans la pièce ont été écrits, consignés ou reproduits et tirer

[Texte]

any reasonable inference from the form or content of the record.

Evidence can be heard on that question, introduced by either side.

Mr. Hogarth: Mr. Turner, with respect, that is merely for the purpose of determining probative value. I am concerned about the determination of admissibility, in the first instance.

Mr. Turner: It says both things; for the purpose of determining whether any provision of this section applies—that is including subsection (1), which is the admitting clause—or the probative value. In other words, to determine the question of admissibility to begin with, and, if admitted, the probative value of that evidence, the judge is free to look at the whole nature of the document itself, listen to oral and affidavit evidence relating to it and can open up the whole matter of cross-examination.

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Mr. Hogarth: Mr. Turner, with respect, perhaps you might consider making that point clear, because I think some judge will come to the conclusion that first of all he has to determine whether or not they are kept in the usual course of business and then determine by looking at the records whether this section applies to them—that is to say, whether they are such records.

Mr. Turner: That is right; I agree; but he is allowed to do that, Mr. Hogarth, when it is for the purpose of determining whether or not any provision of this section applies.

To go back to subsection (1):

Where oral evidence in respect of a matter would be admissible in a legal proceeding, a record made in the usual and ordinary course of business that contains information in respect of that matter is admissible in evidence under this section in the legal proceeding upon production of the record.

The judge determines whether or not that subsection applies, to begin with; so I think we are all right.

Mr. Hogarth: I just leave the thought with you.

Mr. Alexander: How does he do that? I think what the member is suggesting is that before he could even deal with the affidavit, he has to make sure, somehow or other, that

[Interprétation]

toute conclusion raisonnable de la forme ou du contenu de la pièce.

La preuve peut être entendue sur cette question qu'elle soit introduite par une partie ou l'autre.

M. Hogarth: Monsieur Turner, sauf votre respect, le simple but ici est de déterminer la valeur probante. Ce qui m'intéresse d'abord c'est l'admissibilité.

M. Turner: Les deux choses sont mentionnées; dans le but de déterminer si une disposition de cet article s'applique, y compris le paragraphe (1) qui est l'article d'admissibilité, ou la valeur probante. En d'autres termes, déterminer en premier lieu la question d'admissibilité et ensuite, s'il y a admissibilité, la question de la valeur probante de la preuve, le juge est libre d'examiner toute la nature du document lui-même, entendre des témoignages oraux et recevoir un affidavit s'y rapportant et entendre toute l'histoire de la contre-interrogatoire.

M. Hogarth: En toute déférence, monsieur le ministre, vous pourriez considérer l'opportunité de bien préciser la question, parce que un juge pourra arriver à la conclusion que d'abord il doit déterminer si ces pièces sont conservées dans le cours normal des affaires et ensuite de déterminer, en examinant les dossiers, si le présent article s'y applique, en d'autres termes si des dossiers du genre existent.

M. Turner: Je suis entièrement de votre avis; mais il lui est loisible de le faire, monsieur Hogarth, lorsqu'il s'agit de déterminer si oui ou non une disposition du présent article s'applique. Mais revenons au paragraphe (1):

Lorsqu'une preuve orale concernant une chose serait admissible dans une poursuite judiciaire, une pièce établie dans le cours ordinaire des affaires et qui contient des renseignements sur cette chose est, en vertu du présent article, admissible en preuve dans la procédure judiciaire sur production de la pièce.

D'abord le juge détermine si oui ou non ce paragraphe s'applique; je pense qu'il n'y a pas d'inconvénients.

M. Hogarth: C'est en tous cas une idée que je vous propose.

M. Alexander: Comment fait-il cela? Je crois que le député a voulu dire qu'avant qu'il puisse s'attaquer à cet affidavit il doit d'abord s'assurer, d'une façon ou d'une autre,

[Text]

this particular record was made in the usual and ordinary course of business. I suggest that there would have to be some witness through whom the judge could determine whether or not the documents were made in the usual and ordinary course of business.

Mr. Turner: That is right. It is open to the judge and to the adversary system and to other parties under subsection (6) to say to the judge that there are two questions that he has to decide. First, to decide whether it is admissible as a document made in the usual and ordinary course of business; and that he is entitled to look at the document, hear all the evidence on it, take affidavit evidence and to have cross-examination on it.

Should he decide that it is admissible as a document, that is, that subsection (1) applies, then he is also entitled to look at the document itself, hear evidence, receive affidavits and hear cross-examination on what probative value the document should have.

Therefore, at least in our opinion, the admissibility under subsection (1) and the probative value to be attached under subsection (6) give the judge and the parties all the discretion they need.

Mr. Hogarth: The argument we are having here is going to be repeated in the courtrooms of the country, I am sure. In my opinion you should provide that an affidavit under this section can set forth that the documents attached thereto are documents that have been extracted from the usual course of business. That would solve the whole problem.

Mr. Scollin: Such an affidavit might not be necessary, and in fact, might not even be available in many cases; for example, the records in a bankruptcy case, where, in fact, you have only someone's opinion that the records were picked up in the ordinary course of business.

Let us take the case of the hotel register. Put at 28 years what the hotel registry registers; the name of the hotel is marked on it and entries are made regularly each month. Surely, in these circumstances, if they were seized by a police officer and nobody was around the hotel—you could not find the fellow who had kept them—the judge, in deciding whether section 29A applied, would exercise a wee bit of common sense and look at the record and say, "Yes, I think this is a record kept in the ordinary course of business. I therefore determine that subsection (1) applies."

Their probative weight may be another thing, with nobody around to say how carefully they were kept, or whether or not

[Interpretation]

que ce dossier a été fait dans le cours ordinaire des affaires. Je suggère qu'il faudrait y avoir un témoin par l'entremise duquel le juge pourrait déterminer si oui ou non les documents qu'on entend utiliser ont été préparés dans le cours ordinaire des affaires.

M. Turner: C'est exact. Le juge peut, ou une partie ou l'autre, aux termes du paragraphe (6) décider les deux questions suivantes. De décider tout d'abord si le document est admissible en tant qu'établi dans le cours ordinaire des affaires; s'il a le droit de l'examiner, d'entendre la preuve pertinente, accepter des affidavits et procéder à un contre-interrogatoire. S'il décide que le document est admissible, autrement dit que le paragraphe 1 s'applique, il a droit également de jeter un coup d'œil sur le document, d'entendre des témoins, de recevoir des affidavits et d'entendre un contre-interrogatoire afin de déterminer la valeur probante de ce document. Donc, du moins selon nous, l'admissibilité du document en vertu du paragraphe (1) et sa valeur probante en vertu de l'article (6) donne au juge et aux deux parties toute la latitude nécessaire.

M. Hogarth: Notre présente discussion sera, j'en suis sûr, répéter dans les tribunaux du pays. Je crois qu'il devrait être prévu qu'un affidavit aux termes de ce paragraphe doit indiquer que les documents qui sont produits ont été établis dans le cours ordinaire des affaires. Ce serait la solution du problème.

M. Scollin: Ce ne serait peut-être pas nécessaire, et peut-être même impossible dans certains cas; par exemple, dans le cas des dossiers relatifs à une faillite, où vous n'avez que l'opinion de quelqu'un quant à savoir si ces documents ont été établis dans le cours ordinaire des affaires.

Prenons le cas d'un registre d'hôtel. Il remonte disons à 28 ans; le nom de l'hôtel y apparaît et les inscriptions sont faites régulièrement chaque mois. Sûrement, dans ces circonstances, s'ils ont été saisis par exemple par un agent de police et qu'on ne peut pas trouver celui qui a tenu ces dossiers, le juge, en décidant si l'article 29a s'applique, peut exercer son jugement, jeter un coup d'œil sur les dossiers et dire: «Oui, je pense que c'est un dossier établi dans le cours ordinaire des affaires. Je décide donc que le paragraphe (1) s'applique.»

Leur valeur probante, c'est une autre question. Il s'agit de savoir s'ils ont été tenus soigneusement ou autrement et personne peut

[Texte]

entries were normally missed out. Therefore, perhaps, notwithstanding 28 years' work, we could say that their probative value was not really very much.

Mr. Hogarth: Relative to probative value, one cannot cross-examine a piece of paper. The judge might well draw a very, very adverse inference about an accused merely on the production of a document.

Are you suggesting that these documents be admitted without any affidavit at all?

Mr. Scollin: There might be circumstances where no affidavit is possible. For example, let us consider the documents of an accused...

Mr. Hogarth: I appreciate that; but does this section go so far as to admit documents without any affidavit at all setting forth from where they came and from what building they were extracted?

Mr. Scollin: The weight in those circumstances might be extremely minimal, but let us consider the example of documents seized from an accused on a trial. There would be no power to go and get an affidavit from the accused on how these were kept. In this case the inference would have to be drawn from the records.

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Mr. Hogarth: But somebody is going to have to testify that they were seized from the accused.

Mr. Scollin: Oh, yes; somebody would have to testify. The records would have to get into court some way or other—presumably by seizure or by production.

The Chairman: Mr. MacGuigan?

Mr. MacGuigan: Through you, Mr. Chairman, may I ask Mr. Hogarth if the difficulty he envisages is that the court will read subsection (1) without reading subsection (6)?

Mr. Hogarth: No; my concern stems from the fact that I think that before any documents of this nature can be admissible there should be evidence from a member of the firm involved.

That was the problem with microfilming. There should be evidence from the owner, operator, or some officer of the firm involved, to say, "Yes, that is a microfilm copy and it is kept in the ordinary course of business"—without necessarily proving who made the copy, or who put it away.

[Interprétation]

nous le dire, ou si normalement on oubliait les inscriptions. Même si le document remonte à 28 ans, nous pourrions dire que sa valeur probante n'est pas réellement considérable.

M. Hogarth: Quant à la valeur probante, vous ne pouvez pas contre-interroger un dossier. Le juge peut avoir une sorte de prétention contre l'accusé en se fondant sur ce document. Prévoyez-vous qu'un document puisse être accepté sans affidavit?

M. Scollin: Dans certains cas un affidavit peut être impossible. Considérons les documents d'un accusé...

M. Hogarth: Je comprends cela; mais cet article permet-il d'admettre des documents sans affidavit quant à savoir d'où ils viennent et où ils ont été saisis.

M. Scollin: Le poids, dans ces circonstances serait très insignifiant, mais considérons l'exemple de documents saisis d'un accusé mis en jugement. On n'a pas le pouvoir d'obtenir un affidavit de l'accusé pour savoir comment ces documents ont été tenus. D'en ce cas il faudra s'en tenir au dossier même.

M. Hogarth: Quelqu'un devra témoigner qu'ils ont été saisis de l'accusé.

M. Scollin: Oui; quelqu'un devra témoigner. Les dossiers seront produits en cour soit par saisie ou communication.

Le président: Monsieur MacGuigan?

M. MacGuigan: Est-ce que je puis poser une question à M. Hogarth? Avec votre permission, monsieur le président. Est-ce qu'il n'est pas improbable que le tribunal puisse interpréter le paragraphe (1) sans lire le paragraphe (6)?

M. Hogarth: Non. Voici ce qui me préoccupe. J'ai l'impression qu'avant que des documents de ce genre soient reçus, il devrait y avoir un témoin de la maison en cause.

C'était là le problème en ce qui concerne les microfilms. Le propriétaire ou quelqu'un de la maison en cause devrait être disposé à dire «Oui, c'est un microfilm et on le maintient dans le cours normal des affaires.» Il ne s'agirait pas de prouver qui a fait la copie, ou qui l'a serrée.

[Text]

Mr. MacGuigan: Subsection (6) allows that.

Mr. Hogarth: Yes; but this apparently goes much further in that all they have to produce now is just a piece of microfilm with a car registration on it and perhaps marked "General Motors", without any proof of the circumstances under which it was made up, or...

Mr. Turner: I cannot see a judge attaching much probative value to that in any circumstances.

However, I will ask the law officers of the Crown to review this matter. I am not satisfied with it.

Mr. Hogarth: Perhaps it goes a little too far, Mr. Turner.

The Chairman: Mr. Alexander?

Mr. Alexander: Mr. Chairman, the most important part of section 29A subsection (1) relates to the proof required to show that the documents were recorded in the usual and ordinary course of business. It is the most important part because in certain circumstances nothing else can follow. In other words, this is the highlight of that section. Nothing else can follow from it unless and until there is some evidence.

Is the department suggesting that records merely be submitted, and in the event that no one can be located to substantiate them by way of oral evidence or by affidavit evidence, then it be left up to a judge? We are giving a great deal of power, in this particular instance, in relation to a very important and potent part of that section.

Mr. Turner: Your point is well taken, Mr. Alexander, but I would submit to you that, to begin with, admissibility requires an assessment that a judge has to make about any evidence.

What subsection (6) does is to allow him to inspect the document himself, to receive evidence for or against it and to allow cross-examination on its admissibility.

If he does not admit it, that is an end of it. If he does admit it, then the same type of evidence, namely, the document itself and oral evidence for or against it, is allowed on its probative value.

It is part of the judicial process that admissibility of any evidence requires discretion. Of course, if the discretion is not properly exercised that is properly a ground for appeal. Admissibility always tests the judge's discretion.

[Interpretation]

M. MacGuigan: Le paragraphe (b) permet cela.

M. Hogarth: On va beaucoup plus loin ici. En ce sens que tout ce qu'on a produit à l'heure actuelle, c'est le microfilm. Un microfilm comportant un numéro d'enregistrement de voiture avec le mot «General Motors» sans preuve des circonstances dans lesquelles ce numéro a été établi, au...

M. Turner: Dans toutes circonstances, je ne puis voir le juge attacher une grande valeur probante à cela. Quoi qu'il en soit, je vais demander aux juristes de la couronne d'examiner cette question. Je ne suis pas satisfait.

M. Hogarth: Il va peut-être un peu trop loin, monsieur Turner.

Le président: Monsieur Alexander?

M. Alexander: Monsieur le président, la partie la plus importante de l'article 29A(1), c'est la preuve qu'on exige pour déterminer que ces documents ont été établis dans le cours ordinaire des affaires. C'est le point saillant de l'article. Tout découle de ce point. Et à moins qu'on ait des preuves, si l'on se contente de soumettre des dossiers sans que personne puisse déterminer sous forme d'affidavit ou autrement que ces documents sont authentiques et si nous nous en remettons au juge, nous lui confions des pouvoirs extrêmement étendus au sujet d'un point d'une très grande importance.

M. Turner: C'est une bonne question, monsieur Alexander, mais permettez-moi d'abord de signaler que l'admissibilité demande une évaluation que le juge doit faire à l'égard de toute évidence. Au paragraphe 6 on lui permet de jeter un coup d'œil sur le document, de recevoir des témoignages pour ou contre sur l'admissibilité du document, de procéder à un contre-interrogatoire. S'il ne l'admet pas ça finit là. S'il l'admet, alors le même genre d'évidence, soit le document lui-même et toutes les preuves pour ou contre sont admises.

Cela fait partie de la procédure judiciaire. C'est la même chose pour tous les éléments de preuve quant à leur admissibilité et si quelque chose ne va pas rond, il y a toujours le droit d'appel. L'admissibilité est toujours déterminée par le juge.

[Texte]

The Chairman: Mr. Gilbert?

Mr. Gilbert: On proposed subsection (10), Mr. Minister, relative to the inadmissibility provision about which I spoke to you in the House, at the moment the only exclusion is that of solicitor-client. I would like to hear some thoughts relative to the doctor-patient and accountant-client relationships, and so on.

Mr. Turner (Ottawa-Carleton): The word "privilege," of course, is now interpreted within the general scope of the Act, and we have not changed the rules of privilege here.

What are my views about it? I do not think they are yet mature enough to express them. We are looking into the situation of whether the privilege now confined to a lawyer, in certain cases—

Mr. Gilbert: There is a conflict between a doctor and a patient here.

Mr. Turner: We have had the decision of Mr. Justice Stewart in Ontario, but I do not think that the rule of privilege in favour of a doctor is yet clear. Certainly privilege has not been extended to an accountant. The priest in the confessional is a situation that has not come up, to my knowledge, in Canada.

• 1205

Mr. Hogarth: They will not come up here unless you conclude they are businesses.

Mr. Turner: We are looking into the whole question of privilege generally, but I do not have any opinion on it.

Mr. Gilbert: Mr. Turner, I ask because there was an article in the *Toronto Star* at the weekend to the effect that the American Bar Association is now going to make a change relative to this privilege between solicitor and client; in other words, make it admissible. Probably Mr. Scollin is aware of this.

Mr. Turner (Ottawa-Carleton): I would need a lot of convincing before I ever would have anything to do with abrogating this privilege between lawyer and client.

Mr. Gilbert: I am merely stating what the American Bar Association set forth, Mr. Turner.

Mr. Turner: Really?

Mr. Gilbert: Yes, it is true. I will send you a copy of the article.

[Interprétation]

Le président: Monsieur Gilbert?

M. Gilbert: Au paragraphe 10, monsieur le ministre, au sujet de l'inadmissibilité. J'en ai parlé à la Chambre moi-même et en ce moment je voudrais savoir s'il y a une analogie possible avec le rapport entre le médecin et son client par exemple, pour ce qui est de l'avocat et de son client.

M. Turner: Le mot «privilege», bien entendu, est maintenant interprété dans le contexte de la Loi et nous n'avons pas encore changé la règle du privilege.

Je ne crois pas que je sois prêt à me prononcer sur ce point mais nous nous demandons si les privilèges qui sont maintenant limités à l'avocat et dans certains cas...

M. Gilbert: Il y a ici conflit entre le médecin et son patient.

M. Turner: Nous avons eu la décision du Juge Stewart en Ontario, mais je ne crois pas que la règle de privilege en faveur du médecin soit encore claire. Ce privilege n'est certainement pas étendu aux comptables, par exemple. Le prêtre au confessionnel se trouve dans une situation que nous ne connaissons pas assez bien au Canada.

M. Hogarth: Ils ne viendront pas ici à moins que vous finissiez. Ils sont dans les affaires.

M. Turner: La question de privilege est à l'étude de façon générale, mais je n'ai pas de vues à exprimer là-dessus.

M. Gilbert: Monsieur Turner, un article paru dans le *Toronto Star* en fin de semaine disant que le Barreau américain voudrait apporter un changement de ce côté. Autrement dit, rendre ce privilege accessible. M. Scollin est probablement au courant.

M. Turner: Il faudra qu'on me fournisse bien des raisons avant que je sois prêt à abroger le privilege entre client et avocat.

M. Gilbert: Je ne fais que déclarer ce que le Barreau américain a avancé, monsieur Turner.

M. Turner: Vraiment?

M. Gilbert: Oui, c'est vrai. Je vais vous adresser une copie de l'article.

[Text]

Mr. Turner: That is surprising. It is not only surprising; it is incredible.

Mr. McQuaid: Mr. Chairman, subclause (10) paragraph (c) of clause 4 on page 6 states,

(10) Nothing in this section renders admissible in evidence in any legal proceeding...

(c) any transcript or recording of evidence taken in the course of another legal proceeding.

Suppose two men are charged separately in connection with circumstances arising out of the same offence. Defence evidence given in the case of one man results in his acquittal. Before the next man is tried the witness who has given this evidence dies. Does this mean that this man's transcript cannot be used?

Mr. Turner: No. There are other ways of admitting that type of evidence, but not under this section. That evidence may be admissible under another section of the Act, but not under section 29.

Mr. McQuaid: You say it is admissible. Are you sure of that?

An hon. Member: Not with two accused.

Mr. Hogarth: One accused—and if the witness died after the preliminary inquiry.

Mr. Turner: It would not be admissible in this section, anyhow. On whether or not it was admissible you would have to go to another section of the Act; that is all. It does not mean that a previous transcript of a legal proceeding is not admissible.

Mr. McQuaid: It does not mean that?

Mr. Turner: It does not mean that, but that it is not admissible under this section.

Clause 4 agreed to.

On clause 5: Solemn declaration.

Mr. Turner: We propose to the Committee that we amend Section 37 of the Canada Evidence Act which prescribes a form of statutory declaration by deleting the words: "and by virtue of the Canada Evidence Act" in the form. The proposed amendment was recommended by a number of members of the legal profession and by the Conference of Commissioners on Uniformity of Legislation, and the nature of the submissions that were made to the Uniformity Commissioners was something like this:

"The Uniform Evidence Act contains a form of statutory declaration similar to that

[Interpretation]

M. Turner: C'est surprenant. C'est non seulement surprenant, c'est incroyable.

M. McQuaid: Monsieur le président, le paragraphe (10) c) de l'article 4 à la page 6, déclare:

(10) Rien au présent article ne rend admissible en preuve dans une procédure judiciaire...

c) un transcription ou un enregistrement de témoignages recueillis au cours d'une autre procédure judiciaire.

Supposons deux hommes qui sont mis en cause séparément au sujet du même délit. Il peut s'agir de circonstances qui découlent d'un même délit. Mais supposons qu'un prévenu soit acquitté et que celui qui a rendu le témoignage est mort. Est-ce qu'on peut utiliser la transcription?

M. Turner: Non. Il existe d'autres moyens mais pas aux termes de cet article. Ces preuves peuvent être admissibles en vertu d'un autre article de la Loi, mais non aux termes de l'article 29.

M. McQuaid: Vous dites que c'est admissible. En êtes-vous certain?

Une voix: Pas avec deux accusés.

M. Hogarth: Un accusé et si le témoin meurt après l'enquête préliminaire.

M. Turner: Ce ne sera pas admissible aux termes de cet article. Pour que cela soit admissible, il faudra trouver un autre article de la loi qui soit applicable. Cela ne veut pas dire qu'une transcription antérieure d'une procédure juridique n'est pas admissible.

M. McQuaid: Ça ne veut dire cela?

M. Turner: Ça ne veut pas dire cela, mais qu'elle n'est pas admissible aux termes de cet article.

L'article 4 est adopté.

Au sujet de l'article 5: Déclaration solennelle.

M. Turner: Nous proposons de modifier l'article 37 de la Loi sur la preuve au Canada, qui prescrit une sorte de déclaration statutaire, en supprimant les mots: «et en vertu de la Loi sur la preuve au Canada». L'amendement projeté nous a été recommandé par plusieurs avocats et par la Conférence des commissaires sur l'uniformisation de la loi. Voici ce qu'on a proposé: «La Loi uniforme sur la preuve renferme une déclaration statutaire, comme celle dont il est fait mention dans la Loi sur la preuve au Canada, mais en supprimant les mots «en vertu de la Loi sur la preuve au Canada». Les provinces du Mani-

[Texte]

contained in the Canada Evidence Act, but omitting the closing phrase "and by virtue of the Canada Evidence Act". The provinces of Manitoba, New Brunswick, Nova Scotia, British Columbia, Newfoundland and Ontario have prescribed forms of statutory declarations, but without some corrective device there is a danger of using the provincial form in a federal matter and vice versa."

In other words, if you get a declaration made legitimately under a provincial statute, it might not be admitted under the Canada Evidence Act and vice versa.

The neatest and most honest solution would be to have the federal and provincial forms identical and this could be done most accurately by deleting "...and by virtue of the Canada Evidence Act" from the end of the federal form.

Mr. Hogarth: Will we now be able to take federal affidavits from Commissioners? Is the word "Commissioner" not put in there? We always have to use a notary seal when taking an affidavit or declaration to go to another province, but now we can do that as Commissioners.

Mr. Scollin: I am not sure about that, Mr. Hogarth. I would think the present rules would still apply. If you are taking it for use outside the province...

Mr. Hogarth: I see that the words were in the old Section.

Mr. Scollin: It is only a question of which act your declaration has been taken under.

Mr. Hogarth: In any event, I move that that one carry.

Clause 5 agreed to.

Title agreed to.

The Chairman: Shall the bill without amendment carry?

Some hon. Members: Agreed.

The Chairman: Shall I report the bill without amendment?

Some hon. Members: Agreed.

The Chairman: I would like to thank the members in attendance, and also the Minister and his assistants. I do not believe we will have a meeting this afternoon; there is no reason for one. I only hope that we can carry through the Criminal Law Reform Bill with the same dispatch. Thank you.

[Interprétation]

toba, du Nouveau-Brunswick, de la Nouvelle-Écosse, de la Colombie-Britannique, de Terre-Neuve et de l'Ontario ont prescrit une forme de déclaration statutaire, mais sans dispositif correctif il est possible qu'on se serve de la disposition provinciale dans une affaire fédérale et vice versa. En d'autres termes, si vous recevez une déclaration faite légitimement aux termes d'un statut provincial, elle ne serait peut-être pas admise aux termes de la Loi sur la preuve au Canada et vice versa."

La solution la plus logique et la plus honnête serait de prévoir les mêmes déclarations dans les lois fédérales et provinciales et ceci pourrait être fait plus justement en supprimant «et en vertu de la Loi sur la preuve au Canada» à la fin de la formule fédérale.

M. Hogarth: Nous sera-t-il possible maintenant d'accepter des affidavits fédéraux des commissaires? Le mot «commissaire» ne figure-t-il pas là? Il faut se servir du sceau notarial lorsque vous acceptez un affidavit venant d'une autre province? Mais nous pouvons le faire maintenant à titre de commissaires.

M. Scollin: Je n'en suis par sûr, monsieur Hogarth. La règle actuelle continue de s'appliquer, je crois. Si vous le prenez pour vous en servir hors de la province...

M. Hogarth: Je vois que ces mots se trouvaient dans l'ancien article.

M. Scollin: Il s'agit de savoir en vertu de quelle loi la déclaration a été prise.

M. Hogarth: Je propose en tout cas que l'article soit adopté.

L'article 5 est adopté.

Le titre est adopté.

Le président: Bill, sans amendement, adopté?

Des voix: D'accord.

Le président: Dois-je faire rapport du projet de loi sans amendement?

Des voix: D'accord.

Le président: Je remercie les députés qui ont assisté à la réunion, je remercie le ministre et ses adjoints. Je ne crois pas que nous ayons de réunion cet après-midi, je ne vois pas pourquoi nous en aurions une. J'espère que nous pourrions adopter le bill modifiant le droit pénal aussi rapidement que celui-ci. Merci.

OFFICIAL BILINGUAL ISSUE

FASCICULE BILINGUE OFFICIEL

HOUSE OF COMMONS

CHAMBRE DES COMMUNES

First Session

Première session de la

Twenty-eighth Parliament, 1968-69

vingt-huitième législature, 1968-1969

MAR 13 1969

STANDING COMMITTEE

COMITÉ PERMANENT
DE LA

JUSTICE AND LEGAL AFFAIRS

JUSTICE ET DES QUESTIONS
JURIDIQUES

Chairman

Mr. Donald R. Tolmie

Président

MINUTES OF PROCEEDINGS
AND EVIDENCE

PROCÈS-VERBAUX ET
TÉMOIGNAGES

No. 7

TUESDAY, MARCH 4, 1969

LE MARDI 4 MARS 1969

Respecting

Concernant le

BILL C-150

BILL C-150

Criminal Law Amendment Act, 1968.

Loi de 1968 modifiant le droit pénal.

Appearing

Ont comparu

Minister of Justice and
Attorney General of Canada.

Hon. John N. Turner

Ministre de la Justice et
Procureur général du Canada.

Parliamentary Counsel

M. Maurice Ollivier, c.r.

Légiste et conseiller parle-
mentaire

WITNESS—TÉMOIN

(See Minutes of Proceedings)

(Voir Procès-verbal)

THE QUEEN'S PRINTER, OTTAWA, 1969

L'IMPRIMEUR DE LA REINE, OTTAWA, 1969

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman
Vice-Chairman

Mr. Donald R. Tolmie
Mr. André Ouellet

and Messrs.—et Messieurs

Blair,
Brewin,
Cantin,
¹ Deakon,
² Guay (*Lévis*),
Gilbert,

Hogarth,
MacGuigan,
³ MacEwan,
⁴ Marceau,
McCleave,
McQuaid,
(Quorum 11)

COMITÉ PERMANENT
DE LA
JUSTICE ET DES QUESTIONS
JURIDIQUES

Président
Vice-président

⁵ Murphy,
Rondeau,
Schumacher,
Valade,
⁶ Weatherhead,
Woolliams—(20).

Secrétaire du Comité,

R. V. Virr,

Clerk of the Committee.

¹ Replaced Mr. Gibson on March 4, 1969.

² Replaced Mr. De Bané on January 28, 1969.

³ Replaced Mr. Alexander on March 3, 1969.

⁴ Replaced Mr. Brown on January 28, 1969.

⁵ Replaced Mr. Gervais on March 4, 1969.

⁶ Replaced Mr. Chappell on March 4, 1969.

¹ Remplace M. Gibson le 4 mars 1969.

² Remplace M. De Bané le 28 janvier 1969.

³ Remplace M. Alexander le 3 mars 1969.

⁴ Remplace M. Brown le 28 janvier 1969.

⁵ Remplace M. Gervais le 4 mars 1969.

⁶ Remplace M. Chappell le 4 mars 1969.

ORDER OF REFERENCE

WEDNESDAY, February 26, 1969.

Ordered,—That Bill C-150, An Act to amend the Criminal Code, the Parole Act, the Penitentiary Act, the Prisons and Reformatories Act and to make certain consequential amendments to the Combines Investigation Act, the Customs Tariff and the National Defence Act be referred to the Standing Committee on Justice and Legal Affairs.

ATTEST:

ORDRE DE RENVOI

Le MERCREDI 26 février 1969.

Il est ordonné,—Que le Bill C-150, Loi modifiant le Code criminel, la Loi sur la libération conditionnelle de détenus, la Loi sur les pénitenciers, la Loi sur les prisons et les maisons de correction et apportant certaines modifications résultantes à la Loi relative aux enquêtes sur les coalitions, au Tarif des douanes et à la Loi sur la Défense nationale, soit déferé au comité permanent de la justice et des questions juridiques.

ATTESTÉ:

Le Greffier de la Chambre des communes,

ALISTAIR FRASER,

The Clerk of the House of Commons.

(Text)

MINUTES OF PROCEEDINGS

TUESDAY, March 4, 1969.

(8)

The Standing Committee on Justice and Legal Affairs met this day at 3:38 p.m., the Chairman, Mr. Tolmie, presiding.

Members present: Messrs. Blair, Brewin, Cantin, Deakon, Gilbert, Guay (*Lévis*), Hogarth, MacEwan, MacGuigan, Marceau, McCleave, Murphy, Ouellet, Rondeau, Schumacher, Tolmie, Valade, Weatherhead, Woolliams.—(19)

Also present: Messrs. Gibson and Peddle, M.P.'s.

Appearing: The Honourable John N. Turner, Minister of Justice and Attorney General of Canada; Dr. Maurice Ollivier, Q.C., Parliamentary Counsel.

Witness: From the Department of Justice: Mr. D. H. Christie, Deputy Minister.

The Clerk of the Committee read the Order of Reference dated February 26, 1969 relating to Bill C-150.

The Chairman made general remarks regarding the Committee's study of the Bill.

It was agreed that the Steering Committee would discuss further the examination of witnesses, allocation of time, and application of pertinent evidence taken during previous sessions.

The Honourable John Turner made a brief statement regarding the principles of the Bill.

Moved by Mr. MacEwan,

That this Committee agree to make and bring in four separate reports in relation

(Traduction)

PROCÈS-VERBAL

MARDI 4 mars 1969.

(8)

Le Comité permanent de la justice et des questions juridiques se réunit cet après-midi à 3 h. 38, sous la présidence de M. Tolmie.

Présents: MM. Blair, Brewin, Cantin, Deakon, Gilbert, Guay (*Lévis*), Hogarth, MacEwan, MacGuigan, Marceau, McCleave, Murphy, Ouellet, Rondeau, Schumacher, Tolmie, Valade, Weatherhead, Woolliams.—(19).

De même que: MM. Gibson et Peddle, députés.

Aussi présents: L'honorable John N. Turner, ministre de la Justice et procureur général du Canada; et M. Maurice Ollivier, c.r., légiste et conseiller parlementaire.

Témoin: Du ministère de la Justice: M. D. H. Christie, sous-ministre.

Le secrétaire du Comité lit l'ordre de renvoi, en date du 26 février 1969, relatif au Bill C-150.

Le président fait quelques observations générales relatives à l'étude du Bill par le Comité.

Il est convenu que le comité de direction étudiera dans plus de détail les questions de l'interrogation des témoins, de l'affectation du temps disponible, et de l'application des témoignages pertinents reçus lors de séances précédentes.

L'honorable John Turner fait une brève déclaration relative aux principes du Bill.

M. MacEwan propose—

Que le Comité convienne de faire et de présenter quatre rapports distincts sur les

to the following matters contained in Bill C-150. All Clauses:

- (a) referring to abortion;
- (b) referring to homosexuality and gross indecency;
- (c) referring to lotteries and gambling; and
- (d) all the remaining clauses of the Bill.

And further, the Committee be instructed to include these said instructions in the first report of the said Committee to the House.

The motion was negatived: YEAS: 5; NAYS: 11.

The Chairman called clause 2 and the Committee proceeded to the clause by clause study of the Bill.

Clause 2 subclauses (1), (2), (3), and (5) were carried.

Clause 2(4) stand.

Clause 3 was carried.

Clause 4 was carried.

Clause 5 was carried.

Clause 6, stand.

At 6:00 p.m. the Committee adjourned to the call of the Chair.

questions suivantes, traitées dans le Bill C-150:

- a) tous les articles relatifs à l'avortement;
- b) tous les articles relatifs à l'homosexualité et à l'indécence grossière;
- c) tous les articles relatifs aux loteries et au jeu; et
- d) tous les autres articles du Bill.

Que, de plus, le Comité reçoive ordre d'inclure ces instructions dans son premier rapport à la Chambre.

La motion est rejetée par 11 voix à 5.

Le président met en délibération l'article 2, et le Comité passe à l'examen du Bill article par article.

Les paragraphes (1), (2), (3) et (5) de l'article 2 sont adoptés.

Le paragraphe (4) de l'article 2 est réservé.

L'article 3 est adopté.

L'article 4 est adopté.

L'article 5 est adopté.

L'article 6 est réservé.

A 6 h. de l'après-midi, le Comité s'ajourne jusqu'à nouvelle convocation du président.

*Le secrétaire du Comité,
R. V. Virr,
Clerk of the Committee.*

[Texte]

EVIDENCE

(Recorded by Electronic Apparatus)

Tuesday, March 4, 1969

The Chairman: Gentlemen, I see a quorum. I would like to start the proceedings by reading the Order of Reference:

Ordered that Bill C-150, an Act to amend the Criminal Code, the Parole Act, the Penitentiary Act, the Prisons and Reformatories Act and to make certain consequential amendments to the Combines Investigation Act, the Customs Tariff and the National Defence Act, be referred to the Standing Committee on Justice and Legal Affairs.

Signed Alistair Fraser,
Clerk of the House of Commons.

Perhaps it would be in order for the Chairman to make a few general observations. We finally have this skimpy little bill with 120 clauses in front of us. Regardless how expeditiously we treat this bill, I think all of us will agree we are going to be confronted with a great deal of work. It is a massive job. This means, of course, that we will be seeing a lot of each other. I am asking for your co-operation and I am sure that I will get it.

There are a few points I would like to bring out. I think the examination of this bill—and it is a very important and very controversial one—will be a real test for the new committee system. If we get bogged down and are unable to report in a reasonable length of time, then it does not augur well for the future of this new type of committee. If we handle this bill with dispatch, then I think it will augur well for this new type of procedure.

In order to give you some perspective as to the amount of work involved in this Committee, I should inform you that we will have before us very shortly the 1969-1970 estimates of the Solicitor General's Department and the Justice Minister's Department. We have had

[Interprétation]

TÉMOIGNAGES

(Enregistrement électronique)

Le mardi 4 mars 1969

Le président: Messieurs, nous avons le quorum. J'aimerais commencer le débat par la lecture de l'ordre de renvoi:

Il est ordonné, que le bill C-150—Loi modifiant le Code criminel, la Loi sur la libération conditionnelle de détenus, la Loi sur les pénitenciers, la Loi sur les prisons et les maisons de correction et apportant certaines modifications résultantes à la Loi relative aux enquêtes sur les coalitions, au Tarif des douanes et à la Loi sur la Défense nationale, soit déféré au Comité de la Justice et des questions juridiques.

Le greffier de la Chambre des Communes
Alistair Fraser

Messieurs, peut-être que le président du Comité pourrait faire quelques observations d'ordre général. Nous avons enfin ce maigre document sous les yeux, le bill C-150 qui comporte quelque 120 articles. Il faut nous mettre d'accord sur la façon dont nous allons procéder, car nous allons avoir énormément de travail à faire. Ça veut dire que nous allons nous réunir souvent. Je demande votre coopération et je suis sûr que je l'obtiendrai.

Il y a des points que j'aimerais signaler. L'examen de ce bill, qui est très controversé et très important, mettra à l'épreuve le nouveau système de comités. Si nous nous attardons trop à certains points de sorte que nous ne puissions faire notre rapport en temps utile, alors peut-être que l'avenir du système des comités sera compromis. Si, par contre, nous pouvons procéder rapidement avec ce projet de loi, ce sera à l'avantage du système.

Pour vous donner une idée du travail que nous aurons à faire, nous aurons bientôt les prévisions budgétaires de 1969-1970 du ministère de la Justice et du Solliciteur général. Nous avons à étudier des bills d'initiative parlementaire, sur la question de l'écoute

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Private Members' Bills referred to us on electronic eavesdropping and wiretapping devices Bill C-17, An Act to amend the Criminal Code (Invasion of privacy); Bill C-18, An Act

électronique, le Bill C-17, Loi modifiant le Code criminel (Intrusion dans la vie privée); le Bill C-18, Loi modifiant le Code criminel (captation de messages télégraphiques, etc.);

[Text]

to amend the Criminal Code (Wire Tapping, etc.); Bill C-24, An Act to amend the Criminal Code (Control of Electronic Eavesdropping and Wiretapping) and C-78, An Act to amend the Criminal Code (Wire Tapping, etc.) We will have referred to us amendments to the Supreme Court Act. We will eventually have referred to us the Expropriation Act and perhaps the legislation dealing with the official languages, Bill C-120, An Act respecting the status of the official languages of Canada.

This will give you some idea of the mountainous load of work before us. This, of course, does not mean that we will ram this bill through because when it is eventually passed it is going to affect, as we all know, the life and welfare of every man, woman and child in Canada.

However, we must remember that this bill has taken months of drafting and it has been exhaustively researched. No legislation is perfect. After this bill is passed, of course, it will also be subject to amendment in the future. All I am trying to say is that I think we will have to try to keep a delicate balance between a laborious, repetitious study of the bill and merely a cursory examination of it.

The Steering Committee has had several meetings and I would like to thank the members of the Steering Committee for their co-operation. We have discussed certain ground rules. Nothing has been decided, but I would like to submit certain of these ground rules for your consideration.

First it would seem advisable to treat this Bill clause by clause in sequence, with one proviso. If there are subsequent clauses which pertain to the subject under discussion, then I think that these should be gathered in and examined at the same time. To this end we have provided each member of the Committee with an index of the Bill which groups all the related sections. I think this should be most helpful.

Secondly, to be fair in the questioning, I would suggest a ten-minute limit for each questioner and no supplementary questions on the first round of questions. I also do not believe there should be any cross fire or cross exchange among members themselves. All questions should be directed to the witnesses through the Chair.

Regarding the time of sittings, we have allocated to this Committee all Tuesday mornings, Tuesday afternoons, Thursday mornings and Thursday afternoons. The actual time of sittings and the number of sittings, of course, will depend upon the progress we

[Interpretation]

le Bill C-24, Loi modifiant le Code criminel (contrôle de l'utilisation de dispositifs électroniques pour écouter et enregistrer des communications); et le Bill C-78, Loi modifiant le Code criminel (captation de messages télégraphiques, etc.). On nous demandera également d'examiner les amendements proposés à la Loi sur la Cour Suprême, et, éventuellement, la Loi sur les expropriations, et peut-être la mesure législative sur les langues officielles, le Bill C-120, Loi concernant le statut des langues officielles du Canada.

Vous avez une idée du travail qui nous attend. Ce qui ne veut pas dire que nous devons foncer à toute allure parce que lorsqu'un projet de loi est adopté, il a une incidence sur la vie et le bien-être de tous les hommes, femmes, et enfants du Canada.

Il ne faudra pas oublier que la rédaction de ces bills a nécessité plusieurs mois et une recherche approfondie. Aucune mesure législative n'est parfaite. Lorsqu'elle est adoptée, chaque Loi est quand même révisée de temps en temps. Je crois que nous devons nous efforcer d'établir un équilibre entre l'étude lente et souvent répétitive du bill, et un examen trop rapide.

Le Comité directeur s'est réuni plusieurs fois. J'aimerais remercier les membres de ce Comité de leur coopération. Nous avons discuté certaines règles fondamentales. Rien n'a été décidé mais j'aimerais soumettre certaines de ces règles de base à votre considération.

D'abord, nous avons pensé qu'il serait utile de traiter de ce bill article par article avec une réserve. S'il y a des articles ultérieurs qui traitent du même sujet, ils doivent être examinés en même temps. A cette fin, nous avons donné à chaque membre de ce Comité, un index du bill qui groupe tous les articles sur le même sujet. Je crois que ce sera utile.

Ensuite, pour être juste, je suggère dix minutes pour chaque question et pas de questions supplémentaires pour le premier tour de questions. Il ne devrait pas non plus avoir d'échanges entre les députés eux-mêmes. Toutes les questions doivent être dirigées aux témoins par l'entremise du président.

En ce qui concerne la durée de nos séances, nous avons prévu tous les mardis matin, mardis après-midi et jeudis matin et jeudis après-midi. L'heure et le nombre de réunions que nous tiendrons dépendront du travail que nous aurons accompli. Je fais ces quelques

[Texte]

make, but this is what we have decided to do initially. I make these few remarks and now I will throw the meeting open for discussion.

Mr. Woolliams: Mr. Chairman, I agree with you that this Committee has a lot of work before it and I see no reason, if we put our minds and energies to it, that we cannot get through this Bill, even though it seems like a large one, in pretty good haste. There may be some question about calling witnesses which I think should be probably left to the Steering Committee at this time. Secondly I am very happy to see that you have now given us an index of the Bill which we discussed in the Steering Committee and that will help in reference to proceeding in an orderly fashion.

I think that you will agree with me, Mr. Chairman, that when we are dealing with one phase of the Bill, say on the question of abortion, where the sections fall at different pages of the Bill, we should cover all those sections at that time that pertain to that particular subject.

I did speak to the Minister and we did discuss at the Steering Committee in reference to amendments, because it is the Criminal Code and a pretty technical matter of drafting legislation, that if any member wishes to move an amendment to a particular section, we might get some help from the Department of Justice, someone that is skilled in drafting. None of us are skilled drafters, as pointed out by Professor Mewett in *The Criminal Law Quarterly*, Volume 10, 1967-68 at page 383. He says:

Whatever one might think of the philosophy behind the proposed amendments,...

meaning the bill in question

...there is either some very bad drafting or some irrational inconsistencies.

Now he may be wrong in this regard, but it shows how technical it is. He states further:

It is also a pity that s. 149 relating to something called "gross indecency" was not clarified.

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And he goes on to make certain submissions. Why I quote that is not to be critical of the drafting of the Bill, but I do not think any of us, as members of Parliament—perhaps I should speak for myself—are really skilled at drafting legislation to the Criminal Code. I think that is a special skill and it is a special skill of the Department of Justice, and in the

[Interprétation]

remarques, et maintenant j'ouvre la discussion.

M. Woolliams: Monsieur le président, je suis d'accord avec vous que le Comité aura beaucoup de pain sur la planche, mais je ne vois aucune raison pour laquelle on ne pourrait pas en venir à bout de ce projet de loi, de ce bill qui semble néanmoins volumineux. Nous aurons peut-être quelques problèmes en ce qui concerne la convocation des témoins. Nous devrions remettre cela au Comité de direction. Deuxièmement, je suis très heureux de voir que vous nous avez donné un index du bill qui a été discuté au Comité de direction. Ceci nous sera utile afin de procéder d'une façon ordonnée.

Je crois que vous serez d'accord à savoir que si l'on traite d'une phase du bill, sur la question de l'avortement, par exemple, qu'il faudrait traiter de l'ensemble de ces sections, au même moment.

J'ai parlé au ministre et nous avons discuté au Comité de direction la question des amendements, étant donné qu'il s'agit du Code criminel, donc une question très technique au point de vue de la rédaction, si un député souhaite formuler un amendement que nous puissions obtenir de l'aide de la part d'un fonctionnaire du ministère de la Justice qui ait des talents de rédaction. Nous ne sommes pas des rédacteurs expérimentés, comme l'a souligné le professeur Merritt dans le *Criminal Law Quarterly*, volume 10, 1967-1968 à la page 383. Il dit:

Quoi que l'on puisse penser des philosophies des amendements proposés,...

Parlant du bill en question:

...il y a là très mauvaise rédaction et des choses qui sont illogiques.

Peut-être qu'il se trompe, mais c'est certainement une question très technique. En outre, il déclare:

Il est dommage que l'article 149 qui a trait à l'attentat à la pudeur n'ait pas été clarifié.

Il continue et fait certaines soumissions, par ces citations, je ne veux pas critiquer la rédaction du bill, mais nous en tant que députés, et peut-être que je devrais parler simplement en mon propre nom, nous ne sommes pas des spécialistes en rédaction juridique et je crois qu'il appartient au ministère de la Justice ou au ministère du Procureur

[Text]

provinces, of the departments of the Attorneys General. I would hope that we could get some assistance in that regard, when we see there is an amendment that has to be moved, that the amendment will be drawn and drafted with the suggestions and facts and the legal ramifications and suggestions coming from the member in question. I hope we can do that and I think it would save a lot of time.

In reference to witnesses I am not going to say anything today. We did have a discussion in the Steering Committee and I think that is something that we should probably leave with the Steering Committee. I would hope that we would not—and I am speaking for myself—get into a philosophical discussion on the Bill. I think at this stage we could stay with witnesses in reference to legal opinions as to what their interpretation of the various sections might be. After all it is a virgin bill in the sense that it has not been before the courts.

Lawyers do have different ideas and different suggestions as to the interpretation. Therefore, I think that we should have witnesses, but if we could confine—and I am not trying to confine the time as maybe some people want to come here and give some philosophy on various subjects—the Committee to witnesses who might be called as to what their interpretation to the Bill might be I think it would be helpful. It may be that this is something—and I think this is a suggestion—that should be left to the next meeting to discuss in the Steering Committee.

The Chairman: Thank you very much, Mr. Woolliams. Mr. Hogarth?

Mr. Hogarth: Mr. Chairman, I was interested in your remarks with regard to the sequence of the debate, and I think that you suggested that we should have 10 minutes each. But I throw on the floor the suggestion that there should be a rotation in the debate. I think that we should have a rota and that each one is entitled to make his point in a certain sequence. If someone is going to pass on a particular clause, he passes; but he has the opportunity to speak if he wishes. In that way it avoids the necessity of your selecting speakers at random, so to speak.

Secondly, I think that in dealing with the debate we should be very careful not to mix the debate that we might have as Committee members with the examination of any witnesses that might be before us. I think we should get the point of view of the Minister, of the officials or such other witnesses as might be called and then have a general dis-

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général d'avoir des gens qui peuvent faire ce travail, si jamais il y a un amendement, il faudrait que l'amendement soit rédigé en tenant compte des suggestions des députés. Je crois qu'ainsi on pourrait gagner beaucoup de temps.

En ce qui concerne les témoins, je ne veux rien dire à ce sujet, aujourd'hui. Nous avons eu une discussion à ce sujet au Comité de direction, et je crois que c'est quelque chose qui devrait rester entre les mains du Comité de direction. J'espère que nous n'allons pas aborder des discussions d'ordre philosophique sur ce bill. Nous allons demander à des témoins de donner une interprétation des différents articles. Après tout, c'est un nouveau bill au sens qu'il n'a pas été soumis encore à l'épreuve des tribunaux.

Il faudrait avoir l'avis de témoins qui sont compétents en matière d'interprétation juridique. Peut-être que certains veulent venir et parler de philosophie, mais on pourrait peut-être limiter les témoins à des interprétations d'ordre juridique. Je crois qu'on pourrait discuter de cela lors de la prochaine réunion du Comité de direction.

Le président: Merci beaucoup, monsieur Woolliams. Monsieur Hogarth?

M. Hogarth: Monsieur le président, j'ai été intéressé aux remarques concernant la séquence des débats, et je crois que vous avez suggéré que nous devrions avoir dix minutes chacun, mais je pense qu'il devrait y avoir une sorte de rotation dans le débat. Chacun aurait la possibilité d'exprimer son point de vue dans un certain ordre. Si quelqu'un veut passer sur un article donné, il passe, mais il aurait la possibilité de parler. Ainsi, cela évitera le fait que vous seriez obligé de choisir des orateurs de façon aléatoire.

Deuxièmement, en ce qui concerne le débat, il faut faire très attention de ne pas mélanger le débat que nous pourrions avoir en tant que membres du Comité et l'examen d'un témoin que nous avons devant nous. Je crois qu'on devrait entendre le point de vue du ministre, des témoins, des responsables qui viendront nous parler, ensuite poser les

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cussion with respect to the clause itself. I am just putting these things forward as suggestions.

With respect to amendments I agree entirely with Mr. Woolliams and I do think we are going to need some technical assistance in drafting amendments and sub-amendments, as the case may be, and perhaps it might be well for a member to propose an amendment without actually formally moving it. When it has been drafted formally it can be voted upon, so that we can see exactly what we are voting upon.

With respect to witnesses, again I agree entirely with Mr. Woolliams in that I think we should confine evidence in these matters to special situations that arise during the course of our debate. But I would ask that the evidence of the Health and Welfare Committee with respect to abortions be filed with this Committee, because I think it would be a valuable source of information for all of us. Similarly I think there was a parliamentary committee that investigated impaired driving and I think that evidence should be before us so that it would avoid the redundancy of calling any further witnesses on those two subjects.

The Chairman: Are there any further comments?

Well, gentlemen, I think perhaps the best way to handle these matters would be to refer them back to the Steering Committee—I am now talking about the question of rotating speakers which you brought up, the question of assistance in drafting amendments and the question also of making evidence of other committees part of the evidence of this Committee. We can have a meeting of the Steer-

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ing Committee and then come back to the next meeting and give you our views. Would that be acceptable?

Mr. Murphy: I have one question. I agree with everything that has been said by the members so far. Is it possible that there have been subjects other than abortion and impaired driving which are covered in this Bill which have been the subject of study by other parliamentary committees in the past? I think that any earlier studies should be...

Mr. Hogarth: The amendments to 527 were the subject of a study.

The Chairman: Yes, there have been subjects covered by the former Justice Committee which are actually in this Bill. I would think

[Interprétation]

questions pertinentes. Ce ne sont que des suggestions.

En ce qui concerne les amendements, je suis pleinement d'accord avec M. Woolliams et je crois qu'il nous faudrait une aide technique pour la rédaction des amendements, des sous-amendements suivant le cas et il serait peut-être opportun qu'un député propose un amendement sans en faire une motion formelle. Une fois qu'il aura été rédigé convenablement, on pourra l'avoir sous les yeux et voter.

En ce qui concerne les témoins, je suis pleinement d'accord avec M. Woolliams. Nous devrions nous limiter aux situations particulières qui se posent dans nos débats. Le témoignage du Comité de la santé et du bien-être au sujet des avortements devrait être déposé ici parce que je crois que c'est là une source importante. Il y a aussi un comité parlementaire qui a étudié la question des conducteurs en état ivresse. Je crois qu'on pourrait aussi avoir le rapport de ce comité pour éviter double emploi.

Le président: D'autres commentaires?

Messieurs, je pense que la meilleure façon de procéder serait de référer la question de la rotation des orateurs au Comité de direction, et ensuite la question de l'aide en matière de rédaction juridique, et la possibilité d'entendre ici le témoignage qui a été déposé à d'autres comités. Nous pourrions discuter de cela au Comité de direction et lors de notre prochaine réunion, nous discuterons de cela. Êtes-vous d'accord?

M. Murphy: J'ai une question. Je suis d'accord avec tout ce qui a été dit par les membres, jusqu'ici. Est-ce qu'il y a d'autres sujets qui découlent de ce bill et qui auraient été traités par d'autres comités parlementaires en plus de la question de l'avortement et de la conduite en état d'ivresse. Je pense que toute étude qui pourrait avoir une incidence sur ce projet de loi devrait être déposée à ce comité.

M. Hogarth: Les amendements au n° 527 ont fait le sujet d'une étude.

Le président: Il y a toutes les questions qui ont été traitées par l'ancien Comité de la justice. Je crois que le Comité de direction pour-

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that the Steering Committee could make an exhaustive search so that all these Committee reports are available to this Committee.

If there are no further comments I think we should proceed. We will proceed on a clause by clause consideration of Bill No. C-150 the criminal law amendment act, 1969.

I do not believe I have to introduce the Minister of Justice and Attorney General of Canada. Perhaps he might introduce his officials and then make a statement.

Mr. Valade: Mr. Chairman, may I raise a point of order. I forgot to mention it before, but it is about the printing of the proceedings. Have you decided on the numbers of French and English copies to be printed?

The Chairman: Yes, there will be a bilingual issue of 1,000 copies. Mr. Turner.

The Hon. John Napier Turner (Minister of Justice and Attorney General of Canada): Mr. Chairman and gentlemen of the Committee, I am not going to make any opening statement. I am going to rely on the opening statement I made in the House of Commons at second reading. With the consent of the Committee I will address myself, as we go through the Bill, to some of the more controversial clauses or some of the clauses that I believe need a bit of detailed explanation. I want to say that I look forward to a constructive assessment of this Bill by members of the Committee and feel sure that the co-operation that was displayed by all parties in the House at the second reading stage will be continued here. I need not say that the Bill is long and complex and controversial. I think the size of the Bill, the variety of subject matter, speaks for itself. My position here and the position of the government before the Committee is that while we are, of course, committed in principle to the policy content of the Bill, I am certainly flexible in detail and look forward to a constructive assessment of the words and concepts by members of the Committee. Mr. Chairman, what is a matter of detail and what is a matter of principle I may have to interpret in my own humble way.

I want to say to members of the Committee that I believe in the committee system, having sat on both on the opposition and the government sides of the House and having watched the committee system grow in importance. I believe in the function of the legislature as opposed to the executive. I believe also that the committee system enhances the role of a member of Parliament, entitling him to bear his own independent

[Interpretation]

rait faire une recherche approfondie afin que tous les rapports de ces comités soient à la disposition de notre Comité.

Pas d'autres questions?

Nous allons commencer à l'étude article par article du bill C-150, Loi de 1968 modifiant le droit pénal.

Je n'ai pas besoin de vous présenter le ministre de la Justice ou le Procureur général. Il veut peut-être introduire ses fonctionnaires et ensuite faire une déclaration.

M. Valade: Monsieur le président, puis-je en appeler au règlement? La question de l'impression du compte rendu de la réunion. Avez-vous décidé le nombre de copies françaises et anglaises qui seront imprimées?

Le président: Oui, il y aura une édition bilingue qui sera distribuée à raison de mille exemplaires. Monsieur Turner.

L'hon. J. N. Turner (ministre de la Justice et Procureur général): Messieurs, je ne veux pas faire de déclaration d'ouverture; je vais simplement m'en tenir à la déclaration que j'ai faite lors de la deuxième lecture en Chambre. Certains articles méritent une explication détaillée et, si le Comité me le permet, j'aimerais parler de ces articles au fur et à mesure que nous les atteindrons.

J'aimerais vous dire que j'espère qu'il y aura une évaluation constructive de ce bill de la part des membres du Comité, que les partis feront preuve de coopération et que cet esprit de coopération, qui a eu lieu lors de la deuxième lecture, se poursuivra ici. Il est inutile de préciser que ce bill est long, complexe et controversé. L'épaisseur du document et la variété de son contenu parlent d'eux-mêmes. Bien sûr, en principe, nous sommes engagés à la politique prévue dans le cadre de ce bill. Néanmoins, je suis certainement assez souple en ce qui concerne les détails, les mots, les concepts, et ouvert aux suggestions des membres du Comité. Je devrai peut-être interpréter à ma façon ce qui est une question de détail ou une question de principe.

J'ajouterai que je crois en ce système des comités ayant siégé en tant que membre de l'opposition et du gouvernement et ayant vu ce système prendre de plus en plus d'importance. Je crois en la fonction législative en ce qu'elle est opposée à la fonction exécutive. Je crois que le système des comités rehausse le rôle du député en lui permettant d'exposer ses expériences et son jugement et en lui permettant de questionner les fonctionnaires

[Texte]

experience and judgment upon a bill, allowing the member of Parliament to cross-examine officials and cross-examine members of the public, if necessary.

I am in the hands of the Committee and will be at the disposal of the Committee when the Committee sees fit, Mr. Chairman. This is going to require a lot of sittings and I would hope from time to time if my presence is required elsewhere during the course of the next month or so that I might be excused from some meetings and that you could proceed with some of the non-controversial or less controversial clauses, standing them if necessary until I am present.

The technical areas of the Bill will be handled by me and particularly with the aid of the Assistant Deputy Minister, Donald Christie, who is sitting beside me, and also Miss Pauline Sprague, who is sitting beside him, both of whom are skilled in the matters of this Bill, and from time to time John Scollin,

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who is the head of our Criminal Law Section and who, this afternoon, is before the Senate on the hate literature bill and cannot appear here. He is either before the Senate or he has the 'flu. I do not know whether he managed to make the Senate. I am informed that he is before the Senate. He will be here helping the Committee and hating the Minister as well.

I want to make two further comments. In preparing this Bill C-150 and its predecessor, Bill C-195, the government decided at the outset—and this was applied throughout Bill C-150—that this Bill was not a general review of the Criminal Code but simply a bill to incorporate certain new policies into the existing Act.

It was decided at the outset that this would be done with a minimal disturbance of the language already adopted by Parliament in the Criminal Code unless, of course, there were some patent defects in prior draftsmanship discovered along the way. So this Bill is not a general review of the Code. The last general review was in the early 1950s and is found in the Statutes of Canada, 1953-54, Chapter 51. That review was made by a committee of judges and lawyers under the chairmanship of the late Hon. W. M. Martin, formerly Chief Justice of Saskatchewan. Perhaps when we have a national law reform commission one of the early references to that should be a general review of the Code, together with a new research division of the research branch of the Department of Justice which we are setting up.

If I may comment just briefly on Mr. Woolliams' suggestion, to begin with there are very few skilled draftsmen in this country.

[Interprétation]

et les membres du public, si la chose s'avère nécessaire.

Je suis à votre disposition et serai prêt à venir ici lorsque cela sera nécessaire. Je pense que vous aurez plusieurs réunions et, si de temps en temps on a besoin de moi ailleurs, à une autre réunion, j'espère qu'on excusera mon absence. Vous pourrez discuter à ce moment-là des articles moins controversés et de les retenir jusqu'au moment où je pourrai siéger avec vous.

Je traiterai des domaines techniques du bill avec l'aide du sous-ministre adjoint, monsieur Donald Christie, qui est assis à côté de moi, et de mademoiselle Pauline Sprague qui, tous deux sont très au courant de ce bill, et de temps à autre avec l'aide de monsieur John Scollin, chef de la section du droit criminel, qui apparaît présentement devant le Sénat ou qui en est empêché par la grippe. J'ignore s'il a pu se rendre au Sénat. On me dit qu'il y est. Il viendra également pour aider ce Comité tout en détestant le ministre.

Deux autres remarques. En préparant ce bill C-150, et son prédécesseur le bill C-195, le gouvernement a décidé au départ, ceci s'applique à l'ensemble du bill C-150, qu'il ne s'agissait pas d'une revision générale du Code criminel, mais simplement d'un bill qui devait incorporer certaines nouvelles politiques dans la Loi existante.

Il a été décidé au départ que cela se ferait en apportant le moins de changements possibles dans le langage adopté dans le Code criminel, à moins qu'il y ait des défauts évidents. La dernière revision générale du Code remonte au début des années 50. Les résultats apparaissent dans les *Statuts du Canada*, 1953-54, au chapitre 51. La revision est l'œuvre d'un comité de juges et d'avocats, comité présidé par feu l'honorable W. M. Martin, ancien juge en chef de Saskatchewan. Lorsque nous aurons une commission nationale sur la réforme de la loi sa première tâche pourrait être la revision complète du Code en collaboration avec la nouvelle division de la recherche que nous sommes à mettre sur pied au ministère de la Justice.

Quant à la suggestion de monsieur Woolliams, permettez-moi de dire qu'il y a très peu de rédacteurs juridiques qualifiés dans ce

[Text]

Not every lawyer who can interpret a bill is equally skilled at drafting one. I think most of the practising lawyers here will agree with that. It is much easier to tear a bill apart than it is to draft it, particularly if you are a defence counsel. Our drafters in the Department of Justice naturally are taxed to the limit with the various pieces of legislation going through the legislative process and if the Committee in its discussions comes to some consensus on any particular subject or on any particular aspect and if at that stage the ideas are summarized efficiently so that they could be converted usefully into words, it would enable the draftsmen of the Department to submit to the Committee what that consensus might look like in terms of words.

I want to avoid, if I can, underwriting the drafting of a number of amendments around the table that may never have a chance of reaching a consensus. If that were to happen I would be dissipating the drafting skills of the Department when an amendment would not, in terms of reality, have any chance of acceptance before this Committee. When a consensus develops then, of course, the drafting skills of the Department can be put to use. Thank you, Mr. Chairman. I look forward to this exercise with great interest.

Mr. Woolliams: Mr. Chairman, the Minister's remark on this consensus I do not think that was the suggestion of the Steering Committee at all. I am not looking for a lot of amendments that have to be drafted but if we have to have the consensus of the Committee before we can get someone to help us with the drafting of suggested amendments to the amendments of the Criminal Code and those sections that are establishing new policy, I do not think that is of much help.

I do not think this is the time to raise the issue but in passing, if the instructions did go out that bills that come before the standing committees are not to be changed, then your suggestion, Mr. Minister—and I say that through you, Mr. Chairman—is not very helpful because I do not think we are going to get that kind of consensus. I am thinking particularly, say, on the abortion bill, of the abortion section, on which I read again from Volume 10, *The Criminal Law Quarterly* 1967-68, for example, where you have made two real changes. I just draw this to your attention at this moment. Under section 209 of the Criminal Code you have added:

in the act of birth,

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Under the old section, if a doctor in good faith considered it necessary to preserve the

[Interpretation]

pays. Tout avocat qui peut interpréter un bill ne peut pas nécessairement en rédiger un. Les juristes ici présents seront certes d'accord. Il est beaucoup plus facile de détruire complètement un bill que d'en rédiger un, surtout pour un procureur de la défense. Nos rédacteurs juridiques sont surchargés de travail. Mais, si le Comité, au cours de ses discussions, arrive à un consensus sur un aspect particulier, et si, à ce moment-là, les idées ont été résumées d'une façon efficace, alors, les rédacteurs de notre ministère pourraient soumettre un texte qui reflète leurs idées.

Il y a un certain nombre d'amendements qui ne seront jamais acceptés à l'unanimité, et nous ne pourrions pas faire rédiger tous ces amendements parce que cela imposerait trop de travail à nos gens. Mais, s'il y a un accord unanime, alors, on pourra se servir des capacités qui sont disponibles au sein de notre ministère. Merci, monsieur le président.

M. Woolliams: En ce qui concerne la remarque du ministre en matière d'accord unanime, je ne pense pas qu'il s'agisse de la suggestion mise de l'avant par le comité directeur. Je ne m'attends pas à ce qu'il soit nécessaire de rédiger de nombreux amendements, mais s'il nous faut avoir un accord unanime, avant que nous puissions avoir quelqu'un pour nous aider à rédiger des amendements, je ne pense pas que ce sera utile.

Je ne pense pas que ce soit le moment opportun de soulever cette question, mais si l'on nous dit que les bills, qui sont envoyés aux comités permanents ne doivent pas être modifiés, alors, monsieur le président, ceci n'est pas très utile, parce que nous n'arriverons jamais à cet accord unanime. Je songe en particulier à la question de l'avortement au sujet de laquelle on dit au tome 10 du *Criminal Law Quarterly* 1967-68 que vous n'apportez que deux changements réels au Code. Je ne fais qu'attirer votre attention sur le sujet. A l'article 209 du Code criminel vous avez ajouté:

au cours de la mise au monde.

L'ancien article disait que si un médecin jugeait, de bonne foi, qu'il était nécessaire de

[Texte]

life of the mother then he, in good faith, could commit the act of abortion or cause the miscarriage, whatever term you want to use. And then, of course, you have added under the new amendment, "to preserve the health and the life".

Now you come back to section 209. Professor Mewett points out very carefully that by adding those words "in the act of birth" to section 209—and I might just refer to that for a moment. Section 209 (2) reads:

This section does not apply to a person who, by means that, in good faith, he considers necessary to preserve the life of the mother of a child that has not become a human being, causes the death of the child.

As the professor points out, under this particular section by adding "in the act of birth", if you forget about the other amendment or the other changes to the Code, a doctor in good faith to preserve the life of the mother could do the act after the labour pains set in without all the rigmarole of a committee, without a certificate, without having an accredited hospital, and that might be the way to get around all the problems.

Now, in practice and reality I do not believe the medical profession would go that far, but that might be the legal ramifications. What I am suggesting and why I bring it to your attention now is that if that became a practical reality it would be murder in the hospitals. What I am saying now is that we may want to make some changes and we need some draftsmen to help us with those changes. There might not be a consensus. Perhaps the members of the Committee around this table would disagree with the professor of law at the University of Toronto and other professors that take the same position, and they might disagree with the professor who says that whatever one may think of the philosophy behind the proposed amendment there is either some very bad drafting or some irrational inconsistencies.

I am not saying they exist. That is for the Committee to find out, but I am saying that I cannot see, sir, with the greatest respect, that it is very much help to say, "We will give you a draftsman if there is a consensus in the Committee" because you would not know whether there was a consensus until you had the draft before you. In the Minister's own words, whether you are defence counsel or Crown counsel, or corporate lawyers looking at it as they see it, I cannot see that it is much help to say, "We have to have a consensus".

[Interprétation]

maintenir la vie de la mère alors, ce médecin, de bonne foi, pouvait provoquer l'avortement ou la fausse-couche, quel que soit le mot que vous désiriez utiliser. Vous avez également ajouté: «pour sauver la santé et la vie».

Maintenant, revenons à l'article 209. Le professeur Mewett déclare qu'en ajoutant les mots «au cours de la mise au monde» à l'article 209, et l'on pourrait se référer à l'article 209 (2) qui se lit comme suit:

Le présent article ne s'applique pas à une personne qui, par des moyens que, de bonne foi, elle estime nécessaires pour sauver la vie de la mère d'un enfant, cause la mort de l'enfant.

Comme on vient de le souligner aux termes de cet article, en ajoutant «au cours de la mise au monde», si on oublie les autres modifications apportées au Code, un médecin de bonne foi voulant sauver la vie de la mère pourrait prendre les mesures voulues sans attendre les élucubrations d'un comité, sans attendre d'obtenir un certificat, sans même qu'il y ait un hôpital accrédité, et ce serait peut-être le meilleur moyen de tourner les problèmes.

En réalité, je ne pense pas que cela soit conforme à la profession médicale, mais la loi pourrait le permettre. Ce que je prétends ici, et je vous le signale, c'est qu'en permettant cela, on permettra les homicides dans les hôpitaux. Nous voulons faire certaines modifications, et il nous faut de bons rédacteurs pour nous aider à le faire. Peut-être qu'on n'aura pas un consensus. Peut-être que les membres du Comité ne sont pas d'accord avec le professeur de droit de l'Université de Toronto, et avec d'autres professeurs qui pensent comme lui, et n'adopteront pas son attitude lorsqu'il dit, par exemple, que, quoi qu'on puisse penser du principe de cet amendement, ou bien la rédaction est très mauvaise, ou bien il y a des contradictions.

Je ne dis pas que cela existe. C'est au Comité de le découvrir, mais je dis qu'il n'est pas très utile de dire: «on vous donnera un rédacteur, s'il y a consensus au sein du Comité», car vous ne saurez pas s'il y a eu consensus ou non avant d'avoir reçu le texte. Selon l'expression du ministre, que vous soyez avocat de la Défense ou de la Couronne, il n'est pas très utile, d'après moi, de dire: «il faut avoir un consensus».

[Text]

I was really hoping that we could make this a showcase committee and the Department of Justice would say, "Yes, we will give you a man". I do not believe we will have that many amendments—Mr. Gilbert was with us on the steering committee—we may have three or four, we might have five, but when we really feel we have a legitimate, reasonable, logical, legalistic amendment we would like to have the help of a skilled man to put it in writing so we can say before the Committee, "Here is how we could change this section, by these words".

Because it is a technical matter and because it is the Criminal Code, I hope the Minister will reconsider his position and I would like to hear from him now.

Mr. Turner (Ottawa-Carleton): I think we are still talking about it academically until we see what happens as we go through this exercise. It may be that the word "consensus" is too all-embracing, but certainly I would like to see a situation arise where it became clear that an amendment would receive substantial support and that the Committee would want to see the amendment put, whether or not the Committee accepted the amendment. What I want to avoid is dissipating the forces of the Department by underwriting amendments that might be put by any individual member. I think we can solve this as we get along.

The Chairman: Are there any further comments?

Mr. Turner (Ottawa-Carleton): I want to make one further point, that of course the Department of Justice has its primary responsibility to the Government of Canada. We have Parliamentary Counsel as well. We are willing to co-operate, but strictly-speaking I do not want to trespass on Dr. Ollivier's purview either on this.

The Chairman: Dr. Ollivier?

Dr. P. M. Ollivier (Parliamentary Counsel): My point is that if an amendment is produced and defeated it does not matter very much whether it is in proper form or not. I think the amendments you should take care of are the amendments that have been passed. When those amendments have been passed you can ask the draftsmen to put them in proper form to see that they fit into the Bill as they should. I do not think the form is all-important until the amendment has either been agreed to or defeated.

The Chairman: Mr. Deakon?

[Interpretation]

J'espérais vraiment qu'on en ferait une cause type et que le ministère de la Justice nous donnerait un rédacteur. Je ne crois pas que nous aurons autant d'amendements. M. Gilbert était membre du Comité directeur; nous en aurons trois ou quatre, ou peut-être même cinq, mais si nous voulons avoir des amendements légitimes, raisonnables, logiques et juridiques, il nous faudrait un rédacteur compétent qui pourrait écrire l'amendement, de manière que nous puissions dire au Comité: «Voici par quels mots nous modifierions cet article».

Parce qu'il s'agit d'une question technique, et du Code criminel, j'espère que le ministre reconsidérera sa position à ce sujet, et je voudrais qu'il nous dise maintenant ce qu'il en pense.

M. Turner (Ottawa-Carleton): Je pense que nous parlons un peu au plan des principes actuellement. Nous verrons au fur et à mesure comment cela se règlera. Le mot «consensus» est peut-être trop large, mais je voudrais voir une situation où il serait clair qu'un amendement recevrait un appui général et que le Comité voudrait qu'on mette l'amendement aux voix, que le Comité l'accepte ou non.

Ce que je veux éviter, bien sûr c'est qu'on disperse les forces du ministère en rédigeant des amendements que n'importe quel député pourrait présenter. Je crois que nous pourrions régler ce problème au fur et à mesure.

Le président: D'autres commentaires à ce sujet?

M. Turner (Ottawa-Carleton): Je voudrais soulever un autre point. Le ministère de la Justice est d'abord responsable devant le gouvernement du Canada. Nous avons aussi un conseiller parlementaire. Nous voulons collaborer, mais, à proprement parler, je ne veux pas empiéter sur les vues de M. Ollivier à ce sujet.

Le président: Monsieur Ollivier.

M. Ollivier (Conseiller parlementaire): Si un amendement est présenté et s'il est défait, peu importe la forme. Je pense qu'il faudra plutôt tenir compte des amendements adoptés. Alors, on pourrait demander aux rédacteurs de bien les rédiger, dans la forme voulue, pour qu'ils soient incorporés au bill. Je ne crois pas que la forme soit si importante, tant qu'on ne s'est pas entendu sur un amendement, qu'on l'ait adopté ou rejeté.

Le président: Monsieur Deakon?

[Texte]

Mr. Deakon: Mr. Chairman, why do we not go along with the original suggestion and see what happens? If amendments come up we can discuss each amendment at that particular time.

The Chairman: Yes, I think we have had a fair discussion on all the points involved. There is a divergence of opinion. Perhaps we can go over this matter again in the steering committee, Mr. Woolliams, and perhaps by further discussions with the Minister resolve it amicably. Now, I would like to call Clause 2 of the Bill.

Mr. Gilbert: Mr. Chairman, before we get into a general discussion of the clauses I would like to direct a question to the Minister of Justice. In his remarks he said the Bill is not a general review of the Code and that he is hoping to set up a national law reform commission. Now, Mr. Minister, you have said in the House that you hope in the near future to have another bill ready, a bill that would probably embrace expungement of criminal records, reform of the bail system and abolition of corporal punishment, and I would like to hear your views with regard to our intention and the intention of the government...

Mr. Turner (Ottawa-Carleton): That is easy to reconcile, Mr. Gilbert. These are specific subjects we are working on that will be brought forward as soon as they are ready. By a general review I mean a review that looks at all the technicalities of the Act and brings them into accord as a result of the judicial decisions that have interpreted the Code over the years one way or the other—that type of general review—and the way the Code hangs together as a Code might well be left to a national law reform commission. Specific policy measures such as the ones I mentioned in the House—wire tapping, bail and so on—I think will deserve the attention of Parliament at an early date.

Mr. Gilbert: Thank you, Mr. Minister.

The Chairman: Are there any comments on Clause 2?

Mr. MacEwan: In view of the remarks you have made about expeditiously going into this Bill and examining it very closely, but going ahead with our work, I noted the memorandum that was passed around which sets out functionally the related clauses up to Clause 20. In order not to make a long speech at this time I do not have to repeat what was said in the Member for Calgary North, followed by

[Interprétation]

M. Deakon: Pourquoi ne procédons-nous pas selon la première suggestion pour voir ce qui arrivera? Nous pourrions ensuite discuter chacun des amendements qui viendront sur le tapis.

Le président: Je pense que nous avons eu une bonne discussion sur tous les points soulevés. Il y a divergence d'opinions. Peut-être le Comité directeur pourrait-il étudier cette question de nouveau, monsieur Woolliams, et la résoudre à l'amiable en discutant avec le ministre.

Je voudrais maintenant mettre en délibération l'article 2 du Bill.

M. Gilbert: Monsieur le président, je voudrais poser une question au ministre de la Justice, avant le débat. Dans ses remarques, il a dit que le bill n'était pas une révision générale du Code et qu'il espère créer une commission nationale de révision de la loi. Mais, monsieur le ministre, vous avez dit en Chambre que vous espérez avoir bientôt un autre bill qui, probablement, englobera la suppression des dossiers judiciaires, l'abolition du système de cautionnement et de la punition corporelle. J'aimerais savoir quelles sont vos intentions et les intentions du gouvernement à ce sujet...

M. Turner (Ottawa-Carleton): C'est très facile de tout concilier, monsieur Gilbert. Nous travaillons sur divers sujets bien précis qui seront présentés dès que ce sera terminé. Par révision, je veux dire que nous tiendrons compte de tous les détails techniques de la loi et nous les présenterons dans le cadre d'un accord. Nous avons interprété le Code, au cours des années, de diverses façons et cela sera peut-être confié à une commission nationale de révision du Code criminel. Je pense que toutes ces mesures seront présentées au Parlement dans un avenir prochain: espionnage électronique, cautionnement, etc.

M. Gilbert: Merci, monsieur le ministre.

Le président: Y a-t-il des commentaires sur l'article 2?

M. MacEwan: Vous avez parlé d'étudier ce bill avec célérité, mais avec soin. J'ai pris note du mémoire établissant les articles afférents, jusqu'à l'article 20. Je ne compte pas faire un grand discours à ce moment-ci. Je ne vais pas répéter ce qui a été dit par notre parti lorsque le ministre a présenté son bill à la Chambre. Les vues de notre parti ont été présentées par le député de Calgary-nord. É-

[Text]

first introduced by the Minister and when the views of our party were first put forward by the Member for Calgary North, followed by other speakers, about our belief that the Committee reports should be broken down into a number of parts.

We suggested at that time they be broken down into four parts which would, of course give members an opportunity to deal with the various matters coming forward. I note this memorandum actually just points out the references, I take it, to Sections in the present Criminal Code and relates it to it, so if I am in order at this time I would like to make a motion which probably will not come as any surprise. It follows the wording of the motion made in the House of Commons before this Bill was sent to the Committee, so I would like to read it. I have it in English and in French, Mr. Chairman. I would like to read it first and pass it to you for the consideration of the Committee. It reads as follows:

That this Committee be instructed to make and bring in four separate reports in relation to the following matters contained in Bill C-150, All Clauses: . . .

- (a) referring to abortion;
- (b) referring to homosexuality and gross indecency;
- (c) referring to lotteries and gambling; and
- (d) all the remaining clauses of the Bill.

And further, the Committee be instructed to include these said instructions in the first report of the said Committee to the House of Commons.

Mr. Blair: Mr. Chairman, I hesitate to complicate the proceedings by raising a point of order, but I am perplexed and puzzled by the wording of the motion which says that the Committee "be instructed". It seems to me that by wording the motion in this way the member who proposed it is arrogating for Committee the function of the House of Commons of instructing Committees. In its present form I think the motion is technically defective and should be rejected. Alternatively, it might be the kind of thing the Chair would wish to get advice on and this would enable us to proceed with the real business at hand.

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The Chairman: Mr. Blair, I think your point of order is quite correct; this Committee cannot be instructed. The mover of the motion has changed the motion to read:

That this Committee agree to make and bring in four separate reports . . .

[Interpretation]

videmment, il faudrait répartir l'étude en un certain nombre de parties.

Nous avons alors proposé qu'on la scinde en quatre parties, ce qui permettrait aux députés de traiter des diverses questions qui seront présentées. Je pense que ce mémoire signale simplement les articles du Code criminel qui ont été étudiés ici. Je voudrais présenter une motion, qui ne sera peut-être pas une surprise. Elle s'inspire de la motion présentée à la Chambre des communes, avant qu'on ne renvoie le bill au Comité. Je voudrais lire cette résolution. Je l'ai en anglais et en français et je voudrais ensuite la présenter aux membres du Comité. En voici le texte:

Que notre Comité soit prié de présenter quatre rapports différents sur les points suivants du bill C-150, Tous les articles

- (a) sur l'avortement
- (b) sur l'homosexualité et la grossière indécence
- (c) sur les loteries et le jeu, et
- (d) tous les autres articles du Bill.

En outre que le Comité soit prié d'inclure lesdites instructions dans le premier rapport dudit Comité à la Chambre des communes.

M. Blair: Monsieur le président, j'hésite à en appeler au Règlement, mais je suis un peu perplexe ici. Le libellé de cette motion m'intrigue. On y dit que le Comité «soit prié» de présenter quatre rapports. Il me semble que si on rédige la motion de cette façon, le proposeur s'arroge la fonction de la Chambre des Communes qui doit donner des instructions au Comité. Dans sa forme actuelle, je pense que la motion est techniquement irrecevable, et qu'on devrait la rejeter. Alors, ce serait une façon de procéder sur laquelle le président voudrait obtenir des avis ou des conseils, ce qui nous permettrait de vraiment étudier la chose.

Le président: Monsieur Blair, je pense que le rappel au Règlement est correct; le Comité ne peut pas recevoir d'instructions. Celui qui a fait la proposition l'a modifiée, et elle se lit comme suit:

Que le Comité accepte de présenter quatre rapports différents . . .

[Texte]

and with that particular phrasing I would say that this particular motion would be in order. Any comment on this motion?

Mr. MacGuigan: Mr. Chairman, with all due respect to the mover, I do not think that this would be a very satisfactory division. If we were to make a division, this outline would suggest that it should be a 20-fold rather than a four-fold division. To throw a whole group of clauses together that do not have as much appeal as the major portions of the act, I think would lead us to a rather bad arrangement of our discussion.

On the other hand, I am not proposing that we should have a 20-fold division. I think that would be extreme. But it seemed to me from his comments that the mover was not aware that the groupings in this outline we have were important as well. For example, clause 2 subsection (1), clause 27 and clause 41 are grouped together. This is the important aspect of the outline, and the outline in effect says that we are dealing with some 20 different subjects in the proposed bill before us.

Mr. MacEwan: Mr. Chairman, we are not reporting in that way. We are reporting one report.

The Chairman: Any further comments?

Mr. Hogarth: Would it not be up to the House to direct how many reports we are to return?

The Chairman: No, Mr. Hogarth. I believe this would be the prerogative of the Committee, to report back as one whole report or to have a divided report. I think this is within our jurisdiction.

Mr. Hogarth: I see.

The Chairman: Any further comment?

Mr. Woolliams: I would like to make a brief comment—not to repeat the lengthy argument I made in the House, and I am sure the members of the Committee would appreciate that. There are two points here. This index is not what we had in mind. This was to facilitate us being able to size up the various sections in reference to the various subjects which we discussed at the steering committee level.

What we are saying here, and I think this is something that you found when you heard the speakers in the House, is that some people feel because it affects their very conscience and the consciences of the people they represent in the constituency and the nation, that abortion or any extension of the law on abortion is something that they would have to

[Interprétation]

Cette motion pourrait être conforme au Règlement si on la modifiait. Avez-vous des remarques à faire à ce sujet?

M. MacGuigan: Monsieur le président, sauf le respect, je ne pense pas que ce serait une division très satisfaisante. Si nous divisons les questions, il faudrait avoir vingt sections, plutôt que quatre. Je crois que ce serait mal organiser notre débat que de regrouper une série d'articles qui n'ont pas autant d'intérêt que les parties principales du projet de loi.

D'autre part, je ne propose pas que nous divisions notre étude en vingt sections. Cela serait trop. Mais je pense que, d'après ce qu'il a dit, le député qui a présenté la motion ne savait pas que le regroupement fait dans ces indications est important lui aussi. Par exemple, on a regroupé le paragraphe (1) de l'article 2, l'article 27 et l'article 41. C'est là l'aspect important de ces indications, dans lesquelles ont précisé en fait que le Bill traite de 20 sujets différents.

M. MacEwan: Monsieur le président, nous n'allons pas faire rapport de cette façon. Nous ne présenterons qu'un rapport.

Le président: Y a-t-il d'autres observations?

M. Hogarth: N'est-ce pas à la Chambre de décider combien de rapports nous devons faire?

Le président: Non, monsieur Hogarth. C'est au Comité, je pense, de décider s'il va faire un seul rapport ou un rapport divisé. Je crois que nous avons ce pouvoir.

M. Hogarth: Je vois.

Le président: D'autres observations?

M. Woolliams: J'aimerais faire une brève observation, plutôt que de répéter la longue déclaration que j'ai faite à la Chambre, et je pense que le Comité en sera heureux. Il y a deux points que je voudrais signaler. Ces indications ne sont pas ce que nous avions à l'idée. Elles avaient seulement pour but de nous permettre d'évaluer les divers articles par rapport aux diverses questions dont nous avons parlé au comité de direction.

Ce que nous voulons dire ici—et vous avez dû le comprendre d'après les observations faites à la Chambre—c'est que certains députés estiment, du fait que cela met en jeu leur propre conscience et celle du peuple qu'ils représentent, être tenus de s'opposer à l'avortement, ou à tout élargissement de la loi sur l'avortement, alors qu'ils seraient prêts à se

[Text]

vote against and yet they could go along with the rest of the bill.

It seems to me if we could divide the report into four areas, you would be able to avoid forcing people to compromise their conscience.

The same thing applies for some people who might go along with the abortion sections, but who feel very deeply and are very concerned about any law that permits homosexuality and gross indecency even in private by consenting adults 21 years of age and over. The same thing with lotteries and gambling. It is an attempt to get a real consensus of the Committee, and that is what I took from the Speaker's words when he ruled the motion before the House out of order, saying that he did not want to infringe on the jurisdiction of the Standing Committee. That is why I appreciate your remarks, Mr. Chairman, that you felt that Mr. Blair was quite right. I think I must take responsibility for that mistake. Now that has been changed. As you say, it is in order.

This is going to be the showcase of committees, and I think justice and legal affairs should be. Here is where we could show that we are really non-partisan in the sense that we are giving a free vote to people. We are giving the Members of Parliament around the table a chance to express themselves on that portion of the bill that they will accept, or feel the people that they represent in their constituency in Canada would accept, and still maintain the major part of the bill.

I think the editorial in the *Globe and Mail* was well taken, that in second reading really it is not a matter of principle, it is a matter

[Interpretation]

prononcer en faveur des autres sections du projet de loi.

Il me semble donc que si nous pouvions diviser le rapport en quatre sections, nous éviterions de forcer les gens à faire taire leur conscience.

De même, certaines personnes pourraient vouloir se prononcer en faveur des articles relatifs à l'avortement, mais avoir des objections très nettes à l'égard d'une loi qui autoriserait l'homosexualité et l'indécence grossière, même dans l'intimité et entre les adultes consentants âgés de 21 ans ou plus. Il en est de même du jeu et des loteries. Il s'agit d'un effort pour obtenir l'accord unanime des membres du Comité, et c'est ce que j'ai compris des observations de M. l'Orateur lorsqu'il a déclaré irrecevable la motion présentée à la Chambre, disant qu'il ne voulait pas empiéter sur les pouvoirs du Comité permanent. C'est pourquoi, monsieur le président, je suis heureux de ce que vous avez dit, à savoir, que M. Blair avait parfaitement raison. Je pense devoir assumer la responsabilité de cette erreur. Cela a maintenant été modifié et, comme vous le dites, c'est conforme au Règlement.

Nous allons être l'exemple type de tous les comités, ce qui est normal, à mon avis, pour un comité de la justice et des questions juridiques. C'est notre occasion de montrer que nous n'avons aucun parti pris et que nous accordons aux gens un vote libre. Nous donnons aux députés qui siègent ici l'occasion d'exprimer leur opinion sur la partie du Bill qu'ils accepteront, ou que de leur avis, leurs mandants accepteraient, tout en conservant le Bill presque intégralement.

Je pense que l'on a bien saisi l'éditorial qui a paru dans le *Globe and Mail*, et qu'en deuxième lecture, il ne s'agit pas d'une question de principe, mais plutôt d'envoyer le bill au Comité pour étude.

• 1615

of sending the bill here for study. Now it is being studied. Surely when we come out with certain ideas, when we have looked at certain legal ramifications as far as the sections of the new bill are concerned, we would have a chance to express ourselves according to our conscience. I think why we divided it this way—and I would ask for your support on this—is that some people will go along with the rest of the bill if the section on abortion is taken out. Take out the homosexuality and gross indecency section and some people will go along with it. We have members in our party that go along with everything but lotteries and gambling. It is all a different

Nous étudions maintenant le Bill. Assurément, lorsque nous aurons exprimé un certain nombre d'idées et examiné les ramifications juridiques, relatives aux articles du nouveau projet de loi, nous aurons l'occasion de nous prononcer selon notre conscience. Je crois que si nous avons divisé le Bill de la sorte—et j'aimerais avoir votre appui à cet égard, c'est que certaines personnes accepteront le reste du Bill si l'on supprime la section relative à l'avortement. D'autres si l'on supprime les sections relatives à l'homosexualité et à l'indécence grossière. Il y a aussi des membres de notre parti qui sont prêts à accepter tout ce qui figure dans le Bill, sauf les sections relatives au jeu et aux loteries. Ils expriment

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philosophy, a different kind of conscience that they are expressing, and I would ask that the members forget about the situation in the House of Commons in reference to the suggestion that you must line up in certain groups according to party. We should have a true expression of conscience. And, in fact, I think it would help all parties.

I do say this, and perhaps it is very abrupt to say it, that I think it is a package to get through certain things we could not normally have got through unless it was in this package. With the greatest respect to the Minister, I think that is what he had in mind originally, and I am not throwing that in his face this afternoon, believe me. So I ask for support as far as this motion is concerned.

Mr. MacGuigan: Mr. Chairman, I do not think this is a question of politics, but one of logic and procedure. Surely we are here going to go in a step-by-step way, a clause-by-clause way through the bill, and there is ample opportunity at each clause for members who disagree with this particular section of the bill to express a disagreement. What further opportunity do we need to express our disagreement than the opportunity to move an amendment or to vote for an amendment, which would change or completely delete the proposal the government is making? It seems to me, Mr. Chairman, that it would be completely illogical for us, in a procedure which is itself a step-by-step, clause-by-clause approach, to adopt the suggestion which has just been made.

Mr. Blair: Mr. MacGuigan has said everything that I intended to say with the exception that I think it is not only illogical at this stage to make this type of suggestion, but it is premature. I would hate to be a member of a Committee which, on the very opening day of its proceedings, endeavoured to forecast the form and the nature of its report. It seems to me that this is a type of arrogance which I think we should be very careful to avoid.

Mr. MacEwan: I do not know why the member who just came here in 1965, and who introduced rule 16A, or attempted to, in the House of Commons, accused me of being arrogant. I think he has that cornered himself.

Mr. Blair: I think that whatever the point of the member's intervention or interruption is, it probably is quite irrelevant to what I have been saying. The point is that we would look very foolish, I suggest, in this Commit-

[Interprétation]

une philosophie différente des principes différents, et j'aimerais que les membres du Comité oublient la situation de la Chambre des communes et ne se sentent pas tenus de faire bloc avec les membres de leur parti. Nous devons vraiment agir selon ce que nous dicte notre conscience. De fait, je pense que nous aiderons tous les partis en agissant de la sorte.

Je vous dirai franchement—et c'est peut-être là une idée un peu osée—qu'à mon avis, on a regroupé tant de questions différentes dans un même bill afin de faire passer des choses que normalement on n'aurait jamais acceptées. Sauf tout le respect que je dois au Ministre, je pense que c'est ce qu'il avait eu en tête à l'origine—et n'allez pas penser que je lui jette cela à la figure aujourd'hui. En tout cas, je vous demande d'appuyer cette motion.

M. MacGuigan: Monsieur le président, je ne pense pas que ce soit une question de politique, mais plutôt de logique et de procédure. Nous allons étudier le Bill article par article, et tout membre du Comité qui n'est pas d'accord avec un article particulier aura toutes les occasions voulues d'exprimer sa désapprobation. Que peut-on vouloir de plus que l'occasion de proposer ou d'adopter une modification en vue de modifier ou de rejeter complètement la proposition faite par le gouvernement? Il me semble, monsieur le président, qu'il serait tout à fait illogique, dans le cadre d'une procédure qui nous permet une étude article par article, d'adopter la proposition qui vient d'être faite.

M. Blair: Monsieur MacGuigan a dit tout ce que j'avais à dire, et j'ajouterai qu'à ce stade, je trouve non seulement illogique, mais prématuré, de faire une proposition de ce genre. Je m'en voudrais d'être membre d'un comité qui, dès sa première séance, essaie de prévoir la forme et la nature de son rapport. Il me semble que c'est là une forme d'arrogance qu'il faudrait éviter à tout prix.

M. MacEwan: Je ne sais pourquoi le député qui n'est ici que depuis 1965, et qui a introduit ou du moins a essayé d'introduire, la règle 16A à la Chambre m'accuse d'arrogance. Je crois qu'il a le monopole de ce genre de choses.

M. Blair: Quelle que soit la raison de l'intervention, ou de l'interruption, du député, cela n'a sans doute pas grand rapport avec ce que j'ai dit. Ce que je veux dire, c'est que notre Comité se ridiculiserait si, dès le pre-

[Text]

tee if on the first day of our proceedings we declare we are going to form our report in a certain way before we study the bill, before we have gone into it. Mr. MacGuigan is quite correct in saying that if we go through this bill clause by clause we will have more than ample opportunity to vote on these issues as we see them.

Mr. Murphy: I would like to go one step further than Mr. MacGuigan and point out that if the bill is reported in one report, there is nothing, as I understand it, to prevent any member in the House from moving an amendment to any section, and there is nothing to prevent having a vote on each amendment. In that way if you wish to move an amendment to have the abortion clause excluded, for example, then you move that amendment and the vote is taken. I do not see the point in breaking up the report. We have the safeguards that Mr. MacGuigan has mentioned. We have the further safeguards of the amendments which can be made at the report stage of the bill. All these, I think, meet the objections raised by many of the speakers I listened to in the House at second reading.

Mr. Deakon: Mr. Chairman, I am in agreement substantially with the previous three speakers, and the only comment I would like to make at this time is about this business of arbitrarily breaking it up into these four sections. My conscience does not bother me on abortion. What I want to discuss is the busi-

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ness of the breathalyzer test, and you are grouping it in with other parts. I may go along with the Criminal Code amendments as a whole except for that section. I may go along with the Parole Act changes and everything else, but I do not agree with that particular one section. Why not make that a separate part?

The Chairman: Mr. Rondeau?

M. Rondeau: Je suis d'accord avec la motion présentée précédemment, parce que si, pour une raison particulière, nous devons voter contre le Bill dans son ensemble, le public en général croira alors que nous sommes entièrement opposés au Bill. Parce que, pour une raison particulière au Bill, le public nous oblige à voter contre le bill. Alors nous ne pouvons pas voter pour les amendements même acceptables pour nous.

Or, actuellement, c'est notre cas. Nous avons voté contre le bill en Chambre, la semaine passée et le public se demande si nous sommes contre tout le bill parce que c'est un «package deal», un ensemble. Nous

[Interpretation]

mier jour, il déclarait qu'il allait composer son rapport de telle ou telle façon, avant même d'avoir étudié le Bill. M. MacGuigan a parfaitement raison de dire que si nous étudions le Bill article par article nous aurons toutes les occasions voulues de voter sur ces questions comme nous le jugerons bon.

M. Murphy: J'aimerais aller plus loin que M. MacGuigan et faire remarquer que, même si l'on fait un seul rapport sur le Bill, rien n'empêchera, il me semble, qu'un député à la Chambre propose une modification à un article, et que l'on procède à un vote sur chaque modification. Ainsi, si vous voulez proposer une modification, par exemple, faire supprimer l'article sur l'avortement, vous n'avez qu'à le faire, et l'on procédera alors à un vote sur votre modification. Je ne vois pas pourquoi l'on diviserait le rapport. Nous avons les garanties dont a parlé M. MacGuigan. Il y a une autre garantie dans la possibilité de présenter des modifications au moment où l'on fera rapport du Bill. Tout cela, je pense, répond aux objections soulevées à la Chambre par bien des députés lors de la deuxième lecture.

M. Deakon: Monsieur le président, je suis d'accord, en substance, avec les observations faites par les trois députés qui ont pris la parole avant moi. Je voudrais simplement ajouter quelque chose en ce qui concerne la division arbitraire du Bill en quatre sections. La question de l'avortement ne me tracasse

pas. Ce dont je veux discuter, c'est de la question des tests d'ivresse, et vous avez regroupé cela avec d'autres parties du Bill. Je veux bien accepter dans l'ensemble, toutes les modifications du Code criminel, sauf celle-là. Je veux bien que l'on modifie la Loi sur les libérations conditionnelles et tout le reste, mais je m'oppose à cette section particulière. Pourquoi ne pas classer cette section à part?

Le président: Monsieur Rondeau?

Mr. Rondeau: I agree with the motion that has been moved previously because if for a particular reason we must vote against the bill, as a whole, then the public in general will think that we are 100 per cent against the bill. Because, for one particular reason regarding the bill, we are forced to vote against the bill. Then we cannot vote even for the amendments that are acceptable for us.

This now, this is our case. We voted against the bill in the House last week and the public is asking whether we are against the whole bill, since it a package deal. We are not against all the clauses, but because it is a

[Texte]

ne sommes pas contre tous les articles du bill mais parce qu'il est mis dans un tout, nous sommes obligés de voter contre le tout. Et le public est sous l'impression que nous sommes contre tout ce qui est dans le bill alors que nous sommes contre certains articles précis du bill. Tout cela parce qu'on ne veut pas le diviser.

Il nous serait alors beaucoup plus facile de voter pour certaines parties du bill que nous acceptons, et contre d'autres parties que nous n'acceptons pas. Et le même problème se pose pour certains autres députés du Québec qui voient une amélioration dans le bill, des points précis pour lesquels ils pourraient voter pour, mais par contre en votant pour, ils votent aussi pour l'avortement alors que normalement, ils seraient contre. La démarche sème la confusion. Le public ne sait pas en faveur de quoi nous sommes. Si on divisait le bill, il serait plus facile pour le public de savoir que nous sommes pour une chose et contre une autre. Si nous sommes obligés de voter en bloc contre le bill, le public aura une fausse impression.

M. Cantin: Monsieur le président, si vous me permettez de répondre, je crois que c'est induire le public en erreur que de l'instruire sur les formalités de la procédure et non sur cette loi.

C'est très simple. La semaine dernière, les seules questions débattues en Chambre étaient au nombre de deux. On voulait d'abord savoir si en principe, on devait amender le Code criminel ou non, et deuxièmement, si le Code criminel et les amendements proposés devaient être référés à un comité. C'est la seule question en jeu. Il n'était pas du tout question de savoir si un député était pour ou contre tel ou tel secteur en particulier.

De plus, je crois que la Chambre a disposé de ce principe-là la semaine dernière lorsqu'on a voté contre la division du bill en parties. Cela veut dire ceci: le bill est référé en comité et est étudié article par article. Là, chaque député peut proposer les amendements qu'il veut à un article donné. Il y a beaucoup plus que cela: Une fois le bill rapporté à la Chambre, si mon honorable ami veut y inclure un amendement, il pourra le faire. A ce moment, je pense que le public saura parfaitement bien que M. le député Untel a favorisé, par exemple, l'article qui permettra éventuellement les loteries tandis qu'il n'était pas d'accord avec d'autres articles du bill. Je pense que l'argument ne tient pas, que nous devrions continuer l'étude du bill article par article, et entendre ce que les députés ont à dire sur certains des articles du bill.

[Interprétation]

package deal, we are forced to vote against the bill as a whole. And the public is under the impression that we are against everything in the bill whereas we are opposed only to certain specific clauses. This situation has arisen the bill is not to be subdivided.

If it were subdivided it would be much easier for us to vote against certain clauses or parts of this bill, or vote for some other parts.

The same situation arises for some other members from Quebec who at this time consider that some aspects of the bill are an improvement and that there are specific points for which they could vote, but by giving a favourable vote they would also be voting for abortion which, normally, they would not agree to. This creates confusion among the public. They do not know what we favour. If the bill were subdivided, it would be easier for the public to know whether we are for or against this thing or that thing. If we are obliged to vote against the bill as a whole, the public will be under a false impression.

Mr. Cantin: Mr. Chairman, if you allow me to answer, I think it is misleading the public to inform it about the proceedings and not about the Act itself.

It is quite simple. Last week, there were only two questions debated in the House. First, whether or not we should, in principle, amend the Criminal Code. Secondly, whether we should refer the Criminal Code and the proposed amendments to a Committee. This was the only question at stake. There was no question whether or not some member would favour some clause or another.

Furthermore, I believe the House settled that principle last week when a vote was taken so as to present the bill as a whole. This amounts to the following: the bill is referred to a Committee and is then studied clause by clause. Each member can move amendments on any specific clauses. But is far more to it than that: once the bill has been referred to the House and if the hon. member wishes to move an amendment, he can do so. Then the general public will know where a particular member stands, for instance, regarding the clause on lotteries which he may have favoured while disagreeing with other clauses of the bill. I think that this argument does not stand and we should continue to study the bill clause by clause, and hear what the members of Parliament have to say regarding certain clauses in this bill.

[Text]

Le président: Monsieur Valade.

M. Valade: Monsieur le président, je vais commencer par un rappel au règlement, pour dire qu'en comité, il n'est jamais arrivé qu'un député se charge de faire la morale ou de donner des directives aux autres membres du Comité. Alors je pense que M. Cantin ne respectait pas le règlement s'adressant au député qui a pris la parole pour lui faire la leçon. Je pense aussi que nous devons nous adresser au président du Comité et que c'est au président de juger de la recevabilité et de la justesse d'une intervention.

Ceci dit, monsieur le président, je voudrais traiter du mérite de l'amendement. Je pense que l'amendement de mon collègue M. Woolliams rencontrait justement les objectifs que

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vous avez exprimés au départ, en ce sens que le comité devra accélérer le plus possible les débats et la procédure. Pour ce faire, nous avons suggéré de nous entendre pour discuter d'abord les articles les moins controversés et comme M. Woolliams le disait, près de 80 p. 100 des amendements pourraient recevoir rapidement l'approbation unanime.

Ensuite, nous étudierons les secteurs les plus controversés, soit ceux qui portent sur l'homosexualité et l'avortement. Je pense que si nous discutons de l'amendement de ces questions seulement après avoir réglé les points les moins litigieux, du bill, je pense que nous procéderions exactement dans le sens que vous avez suggéré et que nous accélérerions davantage le processus.

Je voudrais vous faire remarquer, monsieur le président, qu'un des avantages à procéder par amendements, c'est qu'il y a dans ce projet de loi des sections qui sont d'ordre technique et légal. Je ne suis pas avocat et si j'emploie des termes qui ne sont pas juridiquement corrects, vous pourrez me corriger M. le ministre de la Justice. Je crois qu'il y a des sections qui sont purement de l'ordre de la technique juridique. Par contre, d'autres ont un double aspect. Elles sont d'ordre technique et moral. C'est là que nous devons reconnaître la responsabilité, le devoir de chacun des députés, non seulement de ce comité, mais de toute la Chambre des communes. Vous savez que tous les députés de la Chambre n'ont pas eu l'occasion de faire valoir leur point de vue sur les aspects de ce bill à la Chambre même.

Je rejoins ici M. Rondeau dans son argumentation. Si comme le mentionnait le député M. Otto dans une lettre circulaire, les membres du gouvernement ont reçu instruction de ne pas accepter de déviation dans le travail du comité, nous serons placés, nous les députés de différentes parties du Canada dans une

[Interpretation]

The Chairman: Mr. Valade.

Mr. Valade: On a point of order, Mr. Chairman. I wish to point out that, in a Committee, no member has never taken it on himself to lecture or give instructions to the other members of the Committee. So I think that Mr. Cantin was out of order when he lectured the member who had the floor. I think we should ask the Chairman of the Committee to judge on the nature of the various interventions.

This being said, Mr. Chairman, I should like to speak on the merit of the amendment. I think that the amendment by Mr. Woolliams met the views expressed by you at the start.

That is, that the Committee will have to accelerate as much as possible the debates and the proceedings. In order to do this, we have proposed that we should first of all discuss the less controversial clauses, and as Mr. Woolliams mentioned, almost 80 per cent of the amendments could get unanimous approval quickly.

Then, we would refer to the controversial clauses, that is, homosexuality and abortion. I think that if we were to discuss these matters only after having settled the less controversial points of the bill, we could proceed expeditiously as you suggested.

I should like to point out to you, Mr. Chairman, that one of the advantages of proceeding by means of amendment is that there are parts of this bill that are of a technical and legal nature. I am not a lawyer and if I do not use the proper legal terms you can correct me, Sir. I believe there are some parts which are strictly of a legal nature.

On the other hand, there are other parts which have a double aspect. They are of a technical and moral nature. This is where we have to recognize the responsibility and duty of every member, not only of this Committee, but of the House of Commons as a whole. You know that not all members of the House have not had the opportunity to voice their opinion on the various aspects of this bill in the House itself.

If, as was mentioned by Mr. Otto in his circular letter, the members of the government have been instructed not to accept deviations in the work of the Committee, then we members representing all parts of Canada will be put in a straitjacket, with the results that we will not be able to tell our constitu-

[Texte]

sorte de camisole de force où nous ne pourrions pas faire valoir à ceux qui nous ont élu que nous avons bien représenté leurs points de vue sur tel aspect du bill. Je pense que là c'est une question de justice et d'équité. Il y a quelques mois nous avons eu l'assurance de la part du premier ministre lui-même qu'il y aurait vote libre à la Chambre. Or ici, en comité, si les indications nous montrent qu'il n'y aura pas de vote libre, nous devons insister davantage pour que l'amendement reçoive une considération plus sérieuse.

Le président: Monsieur Guay.

M. Guay (Lévis): Monsieur le président, à la suite du débat qu'il y a eu à la Chambre, on voulait sectionner complètement le bill article par article. Telle était la situation, aujourd'hui, avant l'amendement. Celui-ci veut qu'on le coupe seulement en quatre. On va en faire un paquet, puis trois autres sections. Je pense que si l'on veut être complètement logique l'on doit continuer. On a exigé, à la Chambre, que le bill soit sectionné article par article et aujourd'hui on ne joue plus article par article. On nous demande de procéder par section: l'avortement, l'homosexualité, les loteries et un autre groupe. Nous devons encore voter pour un groupe.

Il y en a peut-être qui ne sont pas d'accord sur la question de l'ivressomètre, mais qui, pour «sauver» un autre article, vont être obligés de voter en faveur de l'ivressomètre. Encore là nous en revenons définitivement à ce que nous ne voulions pas accepter en chambre. Cet après-midi, on propose au Comité d'étudier le bill article par article et moi je suis pleinement d'accord. Je ne veux pas avoir encore à voter globalement sur l'ivressomètre et sur le port des armes. C'est la seule remarque que j'ai à faire cet après-midi, monsieur le président.

The Chairman: Gentlemen, I think we have had a reasonable discussion, and if you are ready I would like to put the motion.

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Mr. MacEwan: Just a final word. The suggestion has been made, Mr. Chairman, that amendments can be made in the clauses, and that is right. It is also correct that they can also be made at the report stage in the House of Commons.

When all that is finished the bill still remains as one bill and, as I understand it, under the new rules on the third reading we must then vote on the bill as one. That is the final reason I give for dividing it into four because at that time, although it goes through

[Interprétation]

uents that we did indeed represent their opinions on such and such an aspect of this bill.

I think this is a question of fairness and equity. We were given the assurance a few months ago on behalf of the Prime Minister himself that there would be a free vote on this in the House. Now, here in the Committee, should indications show that there will be no free vote, we will then have to insist more to see that the amendment receives more serious consideration.

The Chairman: Mr. Guay.

Mr. Guay (Lévis): Following the debate in the House, the bill was to be completely sectioned, clause by clause. That was the situation today, before the amendment. According to the latter it is to be cut into four parts only. We will make a package and three other sections. I think that if we want to be totally logical we have to continue. In the House, it has been requested that the bill be sectioned clause by clause, and today we are not to proceed clause by clause. We are asked to proceed by parts: homosexuality, abortion, lottery and another group. Then we will have to vote for a package deal.

There may be some who do not agree with the breathalyzer, but who will have to vote for it in order to "save" another clause. So, we are definitely back to what we did not want to accept in the House. This afternoon, the Committee is asked to study the bill clause by clause and I am perfectly in agreement with that. I do not want to vote at one and the same time on the breathalyzer and the right to possess fire-arms. These are the only remarks I have to make this afternoon, Mr. Chairman.

Le président: Messieurs, je crois que nous avons eu une discussion raisonnable. Si vous êtes prêts j'aimerais soumettre la motion.

M. McEwan: Un dernier mot, monsieur le président. On a proposé de formuler des amendements à ces articles, qui peut aussi bien se faire en Chambre.

Néanmoins, le bill est toujours un seul bill et, en troisième lecture, d'après le nouveau Règlement, nous devons voter sur le bill dans son ensemble. C'est pour cela que je demande que ce bill soit divisé en quatre parties, parce qu'à ce moment-là, bien que des amende-

[Text]

the various stages and amendments are made, members will vote on this, that and the other thing and the bill still comes on a matter of principle as one package deal, and in that way members are not given the opportunity to vote on the various separate sections. That is all I have to say. Thank you.

Therefore I move:

That this Committee agree to make and bring in four separate reports in relation to the following matters contained in Bill C-150, All Clauses:

- (a) referring to abortion;
- (b) referring to homosexuality and gross indecency;
- (c) referring to lotteries and gambling; and
- (d) all the remaining clauses of the Bill.

And further, the Committee be instructed to include these said instructions in the first report of the said Committee to the House.

The Chairman: All in favor?

Mr. Murphy: May I ask one question, sir. If it goes in in four reports, as suggested in this amendment, there would be a vote on each report. Is my understanding correct?

The Chairman: That would be my understanding.

Mr. Murphy: Assuming there were differences in votes in each report but assuming all reports passed, there would still be a vote on only the one bill, would there not, only one vote on the bill at third reading. Is that right or wrong?

The Chairman: My understanding is that if this motion went through there could be four separate reports of the Committee.

Mr. Murphy: Right. Then assuming that each of the four carries, there is third reading on only the one bill. Is that not right?

The Chairman: That is my understanding.

Mr. Murphy: Yes. Thank you.

Motion negatived.

Mr. Valade: Before we proceed, Mr. Chairman. On a point of order, in view of the vote that has just been taken—and I am saying this in English because I want to refer to a text—I would like you, Mr. Chairman, to take into consideration the following point that I want to make. I refer to a letter that was sent

[Interpretation]

ments aient été apportés, les députés devront voter sur ceci et cela, le bill sera néanmoins présenté, en principe, comme un ensemble et les députés n'auront pas la possibilité de voter sur ses différents aspects. Merci.

Je propose donc:

Que l'ont ait quatre rapports sur les différents sujets qui figurent au Bill C-150, tous les articles ayant trait,

- a) à l'avortement,
- b) l'homosexualité et l'attentat à la pudeur,
- c) la loterie et les jeux et
- d) les autres articles du Bill.

De plus, que le Comité soit avisé d'inclure ces instructions dans le premier rapport du comité à la Chambre.

Le président: Ceux qui sont pour.

M. Murphy: Puis-je poser une question? Si nous remettons quatre rapports selon ce que propose cette motion, il y aura un vote sur chaque rapport, est-ce bien cela?

Le président: Oui, c'est ainsi que je comprends la chose.

M. Murphy: Et supposons que le vote ne soit pas le même pour chacun, mais que tous les rapports soient adoptés, il y aura toujours un vote sur l'ensemble du bill en troisième lecture, est-ce que c'est bien cela?

Le président: Si je comprends bien, si cette motion est adoptée, il y aurait quatre rapports distincts de la part du Comité.

M. Murphy: Bon, en supposant que ces quatre rapports soient adoptés, alors il y a une troisième lecture uniquement sur le bill dans son ensemble, n'est-ce pas?

Le président: C'est ainsi que je le comprends.

M. Murphy: Oui. Merci.

La motion est rejetée.

M. Valade: A la suite de ce vote, j'aimerais monsieur le président, que vous teniez compte du point que je voudrais faire. Je me réfère à la lettre de M. Steven Otto, député de York-Est, et je cite:

[Texte]

by Mr. Steven Otto, Member of Parliament for York East, and that letter reads in part as follows:

...There have been some disappointments, mostly in the composition and power of the Committees, because although the Committees have been given a great deal of work to do, the Government Members of the Committee have been instructed to make no changes to the Bills, coming before the Committee, and to vote exactly as they are told by the government.

Some hon. Members: Mr. Chairman...

The Chairman: Order, please. Would you

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complete your point of order, please.

Mr. Valade: Mr. Chairman, in past governments I have occupied the position of chairman of the committee and I think the reflections in that paragraph are quite contrary to the rules. It implies that chairmen or members of committees—and this applies mainly to committee chairman—may not act impartially in that way, and because of the vote that was just taken whereby we tried to get some opinions in this Committee about hearing the opposition point of view to the procedure, and as it was unanimously voted down by the Liberal party. I suggest, sir, that the Chair should really either deny it or clear up this statement.

I am not saying this in any derogatory sense whatsoever, I am just saying it to avoid future committee works or other committees of this House from becoming blurred by the inference contained in this letter. This is the only point I wanted to raise in my point of order.

M. Guay (Lévis): Je veux donner une explication sur un fait personnel, monsieur le président, ne faut-il pas faire remarquer que les conservateurs ont tous voté ensemble aussi, alors que deux membres du N.P.D. ont voté avec nous.

The Chairman: Order, please. On the point of order I do not really think the comments are relevant to this past vote. I appreciate the fact that you brought them up. We know how you feel. I think it was answered by one of the members of the Committee when he said that on this particular motion the NDP agreed with the other Liberal members and I think this is self-explanatory. Are there any further comments anyone wishes to make on this point of order?

[Interprétation]

«il y a eu certaines déceptions, surtout en ce qui concerne la composition et les pouvoirs des Comités, parce que bien que les Comités aient reçu beaucoup de travail, les membres du gouvernement au comité ont reçu des instructions pour que ne soient pas apportés des changements aux bills qui sont renvoyés au comité et de voter exactement selon les instructions du gouvernement.»

Des voix: Monsieur le président...

Le président: A l'ordre. Voulez-vous pour-

suivre, s'il vous plaît.

M. Valade: Ayant occupé sous d'autres gouvernements la position de président du Comité, je pense que les réflexions contenues dans ce paragraphe, sont contraires au Règlement. Il sous-entend que le président et les autres membres du comité, et le président en particulier, ne peuvent pas agir d'une façon impartiale, et vu le vote que l'on vient de prendre, nous avons essayé de faire entendre le point de vue de l'opposition, et le parti libéral a voté contre à l'unanimité. Je crois que le président devrait soit nier cette déclaration ou la tirer au clair.

Je ne dis pas qu'elle est dérogatoire, mais je ne voudrais pas, qu'à l'avenir, d'autres comités soient embrouillés par ce qui est sous-entendu dans cette lettre.

Mr. Guay (Lévis): I wish to explain a personal fact, Mr. Chairman. Should it not be pointed out that the Conservatives also voted altogether, whereas two members of the N.D.P. voted with us.

Le président: A l'ordre. Je ne pense pas que ces remarques soient pertinentes. Je suis heureux que vous ayez soulevé ce point. Je connais vos sentiments. Je crois que l'un des membres du comité a déjà répondu quand il a dit que, sur cette motion, le NPD était d'accord avec les autres libéraux, je crois que ceci s'explique de lui-même. Est-ce que quelqu'un d'autre veut faire des remarques sur ce point d'ordre?

[Text]

Mr. Murphy: I would like to make a comment, if I may, Mr. Chairman. Referring to the letter written by Mr. Otto, I do not know whether I have been barred from the party or if I am considered an inconsequential member of this party, but I have not received any instructions like that.

The Chairman: Gentlemen, I rule there is no point of order and I would now like to call clause 2, please. Mr. Hogarth?

Mr. Hogarth: Mr. Chairman, Clause 1 reads "1968". Should that not be changed?

The Chairman: What is the question, Mr. Hogarth?

Mr. Hogarth: Clause 1 reads:

1. This Act may be cited as the *Criminal Law Amendment Act, 1968*.

Should that not be changed?

The Chairman: Mr. Hogarth, that was the first reading in 1968.

Mr. Hogarth: I realize that but presumably the proposed Act will be passed in 1969.

The Chairman: We hope so.

Mr. Hogarth: Perhaps we should leave it blank.

The Chairman: We will come to that clause at the end of our discussions.

Mr. Hogarth: I just wanted to have the great pleasure, in reply to Mr. Otto, of moving the first amendment, that is all. On Part 1, Criminal Code, Clause 2.

The Chairman: Are there any comments on Clause 2?

Mr. Hogarth: Mr. Minister, in dealing with Clause 2, why were there no consequential amendments to sections 601, 679, 720, 724 and 743?

Mr. Turner (Ottawa-Carleton): I can answer that, Mr. Hogarth. I know that certain provincial attorneys general have taken some interest in this particular clause. I think it might save the time of the Committee if I were to give a short explanation of the reason behind this clause, because it is fairly complicated and it involves the institution of criminal proceedings in this country.

Under the present Criminal Code anyone can institute criminal proceedings by swearing an information to the effect that he has personal knowledge of the commission of an offence and he has reasonable and probable grounds for believing, and he does believe,

[Interpretation]

M. Murphy: Monsieur le président, en me référant à la lettre de M. Otto, je ne sais pas si j'ai été éjecté du parti, ou si j'en suis un membre sans importance, mais je n'ai reçu aucune instruction de ce genre.

Le président: Je rejette la motion d'ordre. Nous allons passer à l'article 2, s'il vous plaît. Monsieur Hogarth.

M. Hogarth: A l'article 1, on dit «1968». Est-ce qu'il ne faut pas changer cela?

Le président: Quelle est votre question?

M. Hogarth: L'article 1 dit:

La présente loi peut être citée sous le titre *Loi de 1968 modifiant le droit pénal*.

Est-ce qu'il ne faut pas en changer la date?

Le président: Mais la première lecture a eu lieu en 1968.

M. Hogarth: Je sais, mais elle sera adoptée en 1969.

Le président: Nous l'espérons.

M. Hogarth: Ne vaudrait-il pas mieux laisser un blanc?

Le président: Nous reviendrons à cela à la fin de nos discussions.

M. Hogarth: Je voulais simplement avoir le grand plaisir de proposer le premier amendement. Merci.

Le président: Partie I, Code criminel, article 2. Pas de remarque sur l'article 2?

M. Hogarth: Monsieur le ministre, sous l'article 2, pourquoi n'y a-t-il pas eu d'amendements aux articles 601, 679, 720, 724 et 743?

M. Turner (Ottawa-Carleton): Je crois que je vais répondre parce que je sais que certains procureurs généraux des provinces se sont intéressés à cet article en particulier. Je pourrais faire gagner du temps au comité en donnant une explication assez brève de ce qui sous-tend cet article assez compliqué qui vise la question de la procédure criminelle.

D'après le Code criminel actuel, n'importe qui peut entreprendre une procédure criminelle en affirmant, sous serment, qu'il a une connaissance personnelle d'un délit et qu'il a des raisons valables de croire qu'un délit a été commis. D'après le Code criminel, la pro-

[Texte]

that an offence has been committed. He then specifies what the offence is. Under the • 1640

scheme of the Criminal Code these proceedings may be conducted either by a provincial attorney general or his agents, the Attorney General of Canada or his agents or by any private prosecutor with or without the aid of counsel. The Criminal Code already envisages prosecutions being conducted in the provinces by federal authorities and Mr. Hogarth dealt with section...

Mr. Hogarth: The appeal sections.

Mr. Turner (Ottawa-Carleton): The appeal sections. Sections 601, 720, 734(3) and 743(5), which gives to the Attorney General of Canada the same rights of appeal as are vested in the provincial attorneys general in proceeding by way of indictment for summary conviction where such proceedings are instituted at the instance of the Government of Canada and conducted on behalf of or by that government.

Mr. Hogarth: This is just my point. If you are going to amend the definition of Attorney General in subsection (2) why do you have to continue throughout the Criminal Code to plague it with "the Attorney General and proceedings instituted on behalf of the Government of Canada, etc., may appeal"? "The Attorney General may appeal" would apply because the definition of Attorney General is fixed in subsection (2).

Mr. Turner (Ottawa-Carleton): What you are saying, Mr. Hogarth, is that they are superfluous now.

Mr. Hogarth: Yes, exactly.

Mr. Turner (Ottawa-Carleton): I suppose they could have been changed but they are incidental sections relating to the appeal. We saw no reason to change them. They do not complicate the statute in any way.

Mr. Hogarth: Would it not assist to get this statute down somewhat in size, to start cleaning out these sections by a consequential amendment?

Mr. Turner (Ottawa-Carleton): There might be an opportunity for that in our general review of the Code.

Mr. Hogarth: We could do it now, could we not?

Mr. Turner (Ottawa-Carleton): We are not sure at the moment what the effect might be of eliminating those sections and whether the

[Interprétation]

cédure criminelle relève soit du Procureur général des provinces ou de ses agents, ou le Procureur général du Canada ou ses agents, ou par tout autre procureur privé avec ou sans l'aide d'un conseiller. Le Code criminel envisage déjà les possibilités pour les autorités fédérales d'entreprendre des procédures dans les provinces. M. Hogarth a déjà porté des articles...

M. Hogarth: Des articles visant les appels.

M. Turner (Ottawa-Carleton): Les articles visant les appels. Articles 601, 720, 743 (3) et 743 (5) qui donnent au Procureur général du Canada les mêmes droits d'appel qu'aux procureurs provinciaux de procéder par une inculpation de conviction sommaire, lorsque de telles procédures sont entreprises sur l'initiative du gouvernement du Canada par ou au nom de ce gouvernement.

M. Hogarth: C'est exactement ce que je veux dire. Pourquoi, si vous amendez la définition de «procureur général», à l'article 2, pourquoi poursuivez-vous tout au long du Code criminel avec la formule: «le procureur général et les procédures instituées sur l'instance du gouvernement du Canada peuvent interjeter appel», puisqu'on a fixé déjà la définition de «procureur général», à l'article 2.

M. Turner (Ottawa-Carleton): Ce que vous voulez dire, c'est que c'est superflu.

M. Hogarth: Oui, exactement.

M. Turner (Ottawa-Carleton): Oui, bien sûr, on aurait pu modifier ces autres articles, mais il y a des articles connexes qui se rapportent à l'appel. Nous n'avons vu aucune raison de les changer. Ils ne compliquent pas, de toutes façons, les statuts.

M. Hogarth: Mais est-ce qu'on ne pourrait pas essayer de mettre un peu d'ordre et d'aligner toutes les définitions au moyen d'un amendement pertinent, ce qui réduirait quelque peu le volume des statuts.

M. Turner (Ottawa-Carleton): Il sera peut-être temps de le faire lors de la réforme générale du Code.

M. Hogarth: Nous pouvons le faire aujourd'hui même?

M. Turner (Ottawa-Carleton): Nous ne savons pas exactement quelle sera l'incidence de l'élimination de ces articles et si on pourra

[Text]

elimination would completely counterbalance the change in the definition section here. We have not gone through that exercise.

Mr. Hogarth: Would you be good enough to discuss the suggestion with the law officers? Perhaps we could be advised at a later date and come back to that clause.

Mr. Turner (Ottawa-Carleton): All right.

Mr. Hogarth: There is another point that I want to make. Have you any judicial authority which demarcates that which constitutes the realm of criminal procedure and that which demarcates the realm of the administration of justice?

Mr. Turner (Ottawa-Carleton): What you are getting at here is—what is the responsibility of a provincial attorney general and what is the responsibility of the federal Attorney General in so far as it relates to the administration of justice under the British North America Act?

Mr. Hogarth: Not exactly. I am of the opinion personally that the proposed amendment that you are making here is ultra vires. I do not say that we should not make it and see what the courts do with it because I might be wrong, but it appears to me that the Attorney General of Canada is now moving into the administration of justice and has, in the clauses I mentioned, moved into the administration of justice under the guise of amending the Code in the realm of criminal procedure.

Mr. Turner (Ottawa-Carleton): He is already there. I want to explain this. The Attorney General of Canada is already fully vested with power under the Constitution and under the Criminal Code. I want to explain this very carefully to meet your objection.

I think generally speaking we know that the enforcement of criminal proceedings under the Criminal Code is in practice left to provincial attorneys general, that is under offences within the Criminal Code—murder, rape, and so on. On the other hand, in practice the enforcement of federal statutes where they contain penal sections is assumed by the federal government—narcotics, customs, immigration, bankruptcy and so on. There are exemptions to this because occasionally the Attorney General of Canada prosecutes for criminal conspiracy under Section 408 of the Criminal Code which violates a federal enactment other than the Criminal Code; a conspiracy, for instance, to violate the Narcotic Control Act.

We will take that conspiracy action because it relates to the federal statute even though

[Interpretation]

contrebalancer ce qui figure dans cette définition.

M. Hogarth: Est-ce que vous pourriez discuter ceci avec vos experts juridiques? Vous pourriez nous en donner avis plus tard et nous pourrions revenir sur cette clause.

M. Turner (Ottawa-Carleton): D'accord.

M. Hogarth: Il y a un autre point: avez-vous une autorité judiciaire qui départage ce qui constitue la procédure criminelle et celle qui indique l'administration de la justice?

M. Turner (Ottawa-Carleton): Ce que vous voulez dire, c'est quelle est la responsabilité d'un procureur général de la province et celle du procureur général du fédéral en ce qui a trait à l'administration de la justice d'après l'Acte de l'Amérique du Nord britannique?

M. Hogarth: Non, pas exactement. Ce n'est pas tout à fait cela. Je pense que la proposition d'amendement que vous faites ici est ultra vires. Je ne dis pas qu'il ne faudrait pas la faire et ensuite voir comment les tribunaux s'en tirent, mais il me semble que le procureur général du Canada va administrer la justice et a, en vertu des articles que j'ai cités, pris le pouvoir de modifier le code au sujet de la procédure criminelle.

M. Turner (Ottawa-Carleton): Non, il y est déjà. Le procureur général a déjà de pleins droits en matière de Code criminel, d'après la Constitution.

Je crois que, d'une façon générale, la mise en vigueur des procédures criminelles dans le cadre du Code est laissée au procureur général provincial: les délits, les meurtres, le viol, etc. Maintenant, en pratique, la mise en vigueur des statuts fédéraux, lorsqu'ils ont un aspect pénal, est assumée par le gouvernement fédéral: les narcotics, les douanes, l'immigration, la faillite, etc. Il y a des exceptions, bien sûr, parce que le procureur général du Canada peut aussi entreprendre des procédures en matière de conspiration pour violer, en vertu de l'article 408 du Code criminel, des lois fédérales autres que celles définies par le Code, comme, par exemple, la Loi sur les narcotics.

Ceci se réfère donc à des choses qui sont du domaine du procureur général du Canada.

[Texte]

the conspiracy offence is found under Section 408 of the Criminal Code. The importance of the Criminal Code in relation to prosecution for violation of other federal statutes, federal statutes other than the Criminal Code, is that these other federal statutes merely describe the offence; they

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indicate the type of proceeding that could be taken, namely by way of indictment or under summary proceeding, and they specify the penalty. All the proceedings and the manner in which the prosecution is to be taken are found and left in the provisions of the Criminal Code. In other words, the federal statute merely set forth the offence, the type of proceeding and the penalty.

For all the procedure you are referred to the Criminal Code, and the connecting link is subsection (2) of Section 27 of the Interpretation Act. I want to read that because I believe Mr. Chairman, if I do this it may put it in a better perspective. Section 27, subsection (2) of the Interpretation Act provides:

All the provisions of the Criminal Code relating to indictable offences apply to indictable offences created by an enactment, and, all the provisions of the Criminal Code relating to summary conviction offences apply to all other offences created by an enactment, except to the extent that the enactment otherwise provides.

The federal authorities initiate literally thousands of prosecutions annually across Canada under federal statutes. There are the Customs Act, the Excise Tax Act, the Income Tax Act, the Narcotic Control Act, the Immigration Act, the Bankruptcy Act and so on.

The purpose of this amendment is to cure some gaps in the Criminal Code and to place the Attorney General of Canada, his deputy or his agents, on the same footing as a provincial attorney general respecting those matters in relation to the prosecution under federal statute. That is all. That is the purpose of the amendment.

Mr. Hogarth: Mr. Turner, you have moved into the Criminal Code when you included conspiracy because that is an offence under the Criminal Code. Why could you not move in on theft?

Mr. Turner (Ottawa-Carleton): We could. Your fundamental question is the Constitution. We take the position and the Government of Canada has always taken the position since the Criminal Code was enacted in 1892

[Interprétation]

Maintenant, pour la violation des autres statuts fédéraux, autres que ceux qui figurent au Code criminel, l'on décrit le délit, on indique la procédure qui peut être entreprise et on spécifie la pénalisation. Toutes les procédures, la façon dont on procède, tout cela reste dans les dispositions du Code criminel. Donc, on a dans les statuts fédéraux: le délit, le type de procédures et la façon de pénaliser.

Donc, pour la procédure, on vous réfère au Code criminel et, ensuite, je peux vous lire l'alinéa 2, de l'article 27, de la Loi d'interprétation qui prévoit que:

27. (2) Toutes les dispositions du Code criminel relatives aux actes criminels s'appliquent aux actes criminels créés par un texte législatif, et toutes les dispositions du Code criminel relatives aux infractions punissables sur déclaration sommaire de culpabilité d'appliquent à toutes les autres infractions créées par un texte législatif, sauf dans la mesure où ce dernier en décide autrement.

Les autorités fédérales entreprennent des milliers de procédures, dans le Canada en vertu des statuts fédéraux: la Loi sur les douanes, la Loi sur l'accise, la Loi de l'impôt sur le revenu, la Loi sur l'immigration, la Loi sur les stupéfiants, la Loi sur la faillite, etc.

Le but de cet amendement, c'est de combler certaines lacunes dans le Code criminel et de placer le procureur général, son agent ou son adjoint, sur le même pied qu'un procureur général provincial, en ce qui concerne les actes dans lesquels il peut procéder au niveau fédéral. C'est tout.

M. Hogarth: Vous avez touché au Code criminel quand vous avez parlé de conspiration. Mais, alors, pourquoi pas pour le vol?

M. Turner (Ottawa-Carleton): Nous le pouvons. Votre question fondamentale regarde la constitution. Le gouvernement du Canada a toujours été d'avis, depuis la mise en vigueur du Code criminel en 1892, que la juridiction

[Text]

that the legislative jurisdiction, in deciding by whom and under what circumstances proceedings for violations of the Criminal Code or criminal law are instituted and conducted and defended and terminated and appealed, is a matter purely relating to the criminal law and to criminal procedure—procedure in criminal matters as found within the meaning of Head 27 of Section 91 of the British North America Act.

In our opinion the role of the provincial attorneys general in enforcing the Criminal Code derives from the Criminal Code itself, a statute of Parliament, and not from Head 14 of Section 92 of the British North America Act, which gives the provinces legislative jurisdiction to make laws in relation to the administration of justice in the provinces. In other words, Head 14 of Section 92 is a legislative power to make laws for the administration of justice. It has nothing to do with the prosecution of criminal law and procedure under the heading in Section 91. In other words, whatever is conceded to a provincial attorney general in this statute has been conceded by Parliament under the Code, so that we are not invading any jurisdiction. We are just clarifying an instance; that where we have the authority now to prosecute under federal statutes, we can proceed at every stage just as a provincial attorney general can proceed under the Criminal Code as given to him by Parliament. That is all.

Mr. Hogarth: Excuse me a moment. Mr. Chairman, if I may continue my line of questioning here. Have you any judicial authority for that proposition that the federal Attorney General may prosecute offences against federal statutes other than the Criminal Code?

Mr. Christie: We do it all the time.

Mr. Hogarth: I appreciate what has been done in the past but this is the first time that it has really come to a head.

Mr. Christie: It seems to me that there is clear statutory authority in the Combines Investigation Act and this principle that is embodied here is just carrying that forward. We think that the position taken by the Minister is quite clear from a reading of the British North America Act itself.

Mr. Hogarth: Mr. Chairman, if I may just make a few remarks on this. I found a case called *The Queen versus St. Louis*. Are you familiar with that case?

Mr. Christie: Yes.

Mr. Hogarth: Does that not set forth the proper dichotomy of the respective powers of

[Interpretation]

législative, en décidant dans quelles circonstances une procédure des violations du Code criminel peut être entreprise, défendue ou jugée et être portée en appel, est une question qui a trait à la Loi criminelle et à la procédure criminelle, et ceci est explicité dans l'Acte de l'Amérique du Nord britannique, à l'alinéa 27 de l'article 91.

Selon notre opinion, le rôle du procureur général provincial qui applique le Code criminel, détient son pouvoir d'un statut du Parlement, et non de l'alinéa 14 de l'article 92 de l'Acte de l'Amérique du Nord britannique, et qui donne aux provinces certains pouvoirs législatifs visant l'administration de la justice dans les provinces. En d'autres mots, l'alinéa 14 de l'article 92 pourvoit à un pouvoir législatif visant l'administration de la justice et n'a rien à voir avec la procédure qui découle de l'article 91. Donc, ce qui est accordé comme droits à un procureur général provincial, lui est donné par la Constitution, par le fédéral. Et, d'après les statuts fédéraux, on peut procéder tout comme un procureur général provincial peut le faire. C'est tout.

M. Hogarth: Excusez-moi. Avez-vous une autorité judiciaire pour cette proposition selon laquelle le procureur général fédéral peut poursuivre pour des délits autres que le Code criminel, autres que les statuts fédéraux?

M. Christie: Nous le faisons constamment.

M. Hogarth: Je me rends compte de ce qui a été fait dans le passé, mais c'est la première fois que l'on en parle d'une façon précise.

M. Christie: Il y a dans la Loi sur les coalitions, une autorisation statutaire très claire, on ne fait qu'aller un pas plus loin ici, nous pensons que la position du ministre est tout à fait claire à la lumière de l'Acte de l'Amérique du Nord britannique.

M. Hogarth: Si je peux faire encore quelques remarques, il y a le cas de la Reine contre Saint-Louis. Connaissez-vous cette cause?

M. Christie: Oui.

M. Hogarth: Est-ce que ceci n'établit pas la dichotomie exacte des pouvoirs du procureur

[Texte]

the attorneys general of the provinces and the Attorney General of Canada? Let me just

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read a passage from it. It is in the first volume of the Canadian Criminal Cases at page 141, and as I read the facts of the case it started when there was the old Dominion Police Force and a member of the Dominion Police Force, on the instructions of the Attorney General of Canada, laid an information for obtaining by false pretences.

That was dismissed at the preliminary hearing and he was bound over with the reconnaissance to bring it before a grand jury. It was dismissed by the grand jury and then the accused, as I recollect, sued for his costs—that is really what the case was all about—and the informant claimed that he was acting on behalf of the Government of Canada and was therefore protected. Mr. Justice Wurtele said this at page 145:

By the Act of Confederation, the administration of justice in each of the Provinces is entrusted to the Provincial Government, and it is therefore the provincial law officers of the Crown whose duty it is to conduct or to supervise, as the case may be, all criminal prosecutions. The proceedings are generally commenced by a private prosecutor, who lays his complaint before a magistrate; but in cases which concern the Government of the country or affect public interests, the prosecution may be commenced by the provincial attorney-general himself or a crown prosecutor duly authorized by him, directly preferring a bill of indictment before the grand jury, or when the matter regards the federal government by the Attorney-General of Canada doing so, who must, however, be first authorized to do so by the order of a judge or of the court; or Her Majesty, under the provisions of article 558 of the Criminal Code, may lay an information before a magistrate and thus initiate a prosecution, but, in doing so, the Crown must be represented and must act by the attorney-general of the Dominion or of one of the provinces, as the case may relate either to the Dominion or to a province.

The Attorney-General of Canada is the legal and proper representative of the Crown in all matters which concern the Government of the Dominion, and he has the superintendence of all matters connected with the administration of justice in Canada not within the express jurisdiction of the Governments of the Provinces. As the conduct or supervision of

[Interprétation]

général de la province et celui du fédéral? Je vais vous lire un passage. Premier Volume du *Canadian Criminal Cases*, page 141. En lisant l'historique de ce cas, qui s'est déroulé au temps de la force de police du Dominion, un membre de cette police du Dominion, sous direction du procureur général du Canada, a fait une demande d'information sous des faux prétextes.

La cause a été renvoyée à l'enquête préliminaire, devant un jury, il y a eu là aussi non-lieu. Il semble qu'il agissait au nom du gouvernement du Canada et qu'en conséquence il était protégé. Le juge Wurtele déclare ce qui suit à la page 145:

Par l'Acte de la Confédération, l'administration de la justice dans chaque province est confiée au gouvernement provincial et il appartient en conséquence aux officiers provinciaux de la Couronne d'intenter ou de surveiller, selon le cas, toutes les poursuites criminelles. Les poursuites sont normalement intentées par un individu qui dépose une plainte devant un magistrat; mais dans les cas qui touchent le gouvernement du pays ou les intérêts publics, les poursuites peuvent être entreprises par le procureur général d'une province ou par le procureur de la Couronne qu'il aura désigné à cette fin, en soumettant directement l'acte d'accusation devant un grand jury, ou si la cause touche le gouvernement fédéral par le procureur général du Canada qui, auparavant, aura reçu la permission d'agir ainsi grâce à un ordre émis par un juge ou par la cour; ou bien, Sa Majesté, en vertu de l'article 558 du Code criminel peut déposer certains faits devant un magistrat et ainsi initier une poursuite, mais, en agissant ainsi, la Couronne doit être représentée et doit agir par l'entremise du procureur général du pays ou de l'une des provinces, selon que la cause touche le Dominion ou une province.

Le procureur général du Canada est le représentant légal et autorisé de la Couronne en tout ce qui touche le gouvernement du Dominion et il est chargé de la surveillance de toutes ces questions qui sont reliées à l'administration de la justice au Canada et qui ne tombent pas sous la compétence expresse des gouvernements des provinces. Puisque la pré-

[Text]

criminal prosecutions before the criminal courts devolves upon the provincial law officers, the Attorney-General of Canada has no ministerial duties or official legal functions to perform in that connection, and consequently when he, with the consent of a judge or under an order of the court, prefers a bill of indictment, and conducts a prosecution before the petit jury in which the Government of the Dominion is interested, he occupies a position which is analogous to that of a private prosecutor.

Of course, the crux of the matter lies in who has the control of criminal prosecutions, because, with respect, the Combines Investigation Act is a criminal prosecution if a case ensues, because that is the only way the federal government has jurisdiction. The Narcotic Control Act prosecutions are surely criminal prosecutions, and the mere fact that they are not contained in the Criminal Code does not change their character.

The gist of the thing is that when the federal government goes into a provincial court and prosecutes, surely the conduct of the proceedings—that is to say, the day-to-day appearances, and so on—are on his behalf by a prosecutor appointed by him; but what happens when you want to enter a stay of proceedings? Is it not the administration of justice that is then concerned, and how can the Attorney General of Canada move into the administration of justice and enter a stay of proceedings in any prosecution any more than can any private prosecutor?

Mr. Christie: The reason that we cannot enter a stay of proceedings now is that we are not covered in Section 490 of the Criminal Code. That is the precise purpose of this amendment.

Mr. Hogarth: I appreciate that.

Mr. Christie: So that in one of our prosecutions, if we see fit to enter a stay of proceedings, we will have authority to do it.

Mr. Hogarth: Yes; but the point is that the entry of a stay of proceedings is part of the administration of justice, and that it the responsibility of a provincial attorney-general.

Mr. Christie: But the phrase, "administration of justice", sweeps across the whole scope of the Criminal Code.

Mr. Hogarth: Exactly; and all the criminal law; and surely it is the provinces which are responsible for such administration?

[Interpretation]

sensation ou la surveillance des poursuites criminelles intentées est du ressort des officiers provinciaux, le procureur général du Canada n'a aucun devoir ni aucune fonction juridique officielle à exercer à ce sujet, de sorte que lorsqu'il préfère présenter un acte d'accusation, avec le consentement d'un juge ou par suite de l'émission d'un ordre de la cour, et intenter sa poursuite devant un petit jury, si le gouvernement du Dominion est en cause, alors il occupe une position analogue à celle d'un plaignant ordinaire.

Évidemment, il importe de savoir qui a le contrôle sur ces poursuites criminelles parce que la *Loi relative aux enquêtes sur les coalitions* entraîne une poursuite criminelle, s'il y a poursuite, vu que c'est uniquement sous cet aspect que le gouvernement fédéral a autorité. Les poursuites intentées au terme de la *Loi sur les stupéfiants* sont sûrement des poursuites criminelles et le simple fait qu'il n'en soit pas question dans le Code criminel ne modifie en rien la situation.

Si le gouvernement fédéral se présente devant une cour provinciale pour intenter une poursuite, tout se fait en son nom par un procureur qu'il a lui-même désigné à cette fin; mais qu'arrive-t-il si vous désirez suspendre les instances? N'est-ce pas l'administration de la justice qui les intéresse? Comment le procureur général du Canada peut-il demander un sursis dans une cause quelconque?

M. Christie: La raison pour laquelle nous ne pouvons pas réclamer de sursis, à l'heure actuelle, c'est que le cas n'est pas prévu à l'article 490 du Code criminel. Tel est le but de cet amendement.

M. Hogarth: Je comprends.

M. Christie: Dans l'une de ces poursuites, si nous désirons suspendre les instances, nous pourrions maintenant le faire.

M. Hogarth: Très bien, mais la demande de sursis fait partie de l'administration de la justice, et c'est là la responsabilité du procureur général de la province.

M. Christie: L'expression «administration de la justice» embrasse l'ensemble des dispositions du Code criminel.

M. Hogarth: Précisément. Ainsi que l'ensemble du droit criminel. Les provinces ne sont-elles pas responsables en ces domaines?

[Texte]

Mr. Christie: Well, do you carry that through to the point that the federal government cannot prosecute any criminal offences without some kind of leave from the provinces?

Mr. Hogarth: No, not at all. I say that when you do you are exactly in the position that Mr. Justice Wurtle suggested—that you do so, but under the blanket authority of the attorney general of the province, because that attorney general is responsible for the administration of justice. I certainly take it one step further...

The Chairman: Actually you have gone past your time limit. Would you make your remarks a little shorter, please?

Mr. Hogarth: I take it one step further, Mr. Minister, and I go into the realm of juvenile delinquency which is in the field of criminal law. Certainly in the field of juvenile delinquency, which is far more closely associated with provincial policies, the attorney general of the province has a very keen interest, even though it may be a federal prosecution and it is my respectful suggestion that by putting this amendment in the Code you have moved in on the field of the administration of justice—and indeed admit you have in the past relative to the other sections that have been done. But I look forward to seeing the progress of this particular section in the courts.

The Chairman: Thank you. Mr. Brewin?

Mr. Brewin: Mr. Chairman, I am just wondering whether this Committee could in a sense sit in judgment on these fine constitutional issues. I know nothing more fascinating than discussion of constitutional issues. If I were asked an opinion I would say that the federal government under the criminal procedure power, if it legislates, certainly can occupy the field. But we have been assured by the Minister of Justice that this matter has been looked into and that they think they have the jurisdiction to do this, but I am just wondering whether it is necessary for us to formulate an opinion. Certainly it is a matter that would be very interesting, but I wonder how we will ever get through the 126 sections if we argue these points in each case.

The Chairman: Are there any further questions on Clause 2?

Mr. Hogarth: I have a further point on Clause 2 that does not deal with the constitutional aspect but it deals with Section 489. Do you want to consider it when we come to 489?

[Interprétation]

M. Christie: Prétendez-vous que le gouvernement fédéral ne peut tenter une poursuite en vertu d'offenses criminelles sans en avoir obtenu la permission des provinces?

M. Hogarth: Pas du tout. Je dis que lorsque vous le faites, vous le faites avec la permission implicite du procureur général provincial qui est responsable de l'administration de la justice. Je vais un peu plus loin...

Le président: Vous avez dépassé votre temps. Voudriez-vous abréger, s'il vous plaît?

M. Hogarth: Je vais un peu plus loin, monsieur le ministre, et vous cite le cas de la délinquance juvénile qui est certes de droit criminel. La délinquance juvénile touche de beaucoup plus près les politiques provinciales et le procureur général provincial y est très intéressé même si les poursuites, à ce chapitre, relèvent du fédéral; je crois bien humblement qu'en modifiant le Code en ce sens vous entrez dans le domaine de l'administration de la justice. J'ai hâte de voir le sort que lui réserveront les cours de justice.

Le président: Merci. Monsieur Brewin?

M. Brewin: Je me demande, monsieur le président, si ce Comité peut rendre un jugement sur ces questions d'ordre constitutionnel. Je ne connais rien de plus fascinant que ces discussions sur des sujets de cet ordre. Si on me demandait mon opinion, je dirais que le gouvernement fédéral, en adoptant une législation appropriée, peut occuper ce champ d'activité. Le ministre de la Justice nous assure que la question a été étudiée et que son ministère croit avoir juridiction en ce domaine, mais je me demande s'il est nécessaire que nous formulions, ou non, une opinion. La question serait fort intéressante mais je me demande comment nous en arriverons à discuter les 126 articles du bill si nous continuons d'argumenter ainsi.

Le président: Est-ce qu'il y a d'autres questions?

M. Hogarth: Oui, monsieur le président. Je ne désire pas m'attarder à l'aspect constitutionnel, ma question a trait à l'article 489. Désirez-vous que j'attende que nous en arrivions à cet article?

[Text]

The Chairman: Yes I think that might be better.

Mr. Hogarth: I think that the Deputy Attorney General should be added to the provisions of section 489 subsection 2.

The Chairman: I think that would best be dealt with under section 489.

Mr. Turner (Ottawa-Carleton): The hon. member has a point there. I cannot remember why, but there is a little oversight there.

Mr. Hogarth: You would not assume the brave position with the first point that you did with the Languages Bill, would you?

Mr. Turner (Ottawa-Carleton): That it will not be challenged? I will have to ask Dr. Kennedy what he wants to do.

The Chairman: Mr. Valade, please?

M. Valade: Monsieur le président, je voudrais référer à une définition telle que formulée dans le texte français:

“(36) “procureur général” désigne le procureur général ou solliciteur général d’une province où sont intentées. . .

Dans la province de Québec, il n’y a pas de procureur général actuellement; c’est le ministre de la Justice qui en joue le rôle, parce que le ministère a été réorganisé. Je me demande s’il n’aurait pas lieu de tenir compte de ce changement de situation.

M. Turner (Ottawa-Carleton): Je crois qu’il a le même titre que moi actuellement, M. Valade. Le ministre de la Justice est procureur général, dans la province de Québec.

M. Valade: Mais, pour être plus précis dans la définition des termes, je me demande s’il n’y aurait pas lieu. . .

M. Turner (Ottawa-Carleton): Comme ministre de la Justice, il a la charge de l’administration de la justice comme le procureur général a la charge de ces fonctions ici.

M. Valade: Je ne voudrais pas discuter des aspects techniques de la question, mais je pense que, comme le procureur général des autres provinces remplit un rôle exécutif et législatif, il a une autorité intégrée alors que dans le bill, vous faites une différence dans la définition des termes. Je me demande si on ne pourrait pas ajouter ou «solliciteur général» ou «ministre de la justice» d’une province, ce qui clarifierait la situation. Parce que, si je comprends bien, il y a une division d’autorité dans la définition de ministre de la Justice; il remplit égale-

[Interpretation]

Le président: Je crois que ce serait préférable.

M. Hogarth: Je crois que le nom du procureur général adjoint devrait être ajouté au paragraphe 2 de l’article 489.

Le président: Je crois que nous devrions attendre d’être rendus à l’article 489.

M. Turner (Ottawa-Carleton): L’honorable député a soulevé ce point avec raison. J’ignore pourquoi, mais il y a eu un oubli ici.

M. Hogarth: Vous ne désirez pas adopter la même attitude qu’au sujet du bill sur les langues, n’est-ce pas?

M. Turner (Ottawa-Carleton): Qu’il ne sera pas mis en doute? Je devrai demander au docteur Kennedy ce qu’il entend faire.

Le président: Monsieur Valade.

Mr. Valade: Mr. Chairman, I would like to refer to a definition as formulated in the French text:

(2) “Attorney General” means the Attorney General or Solicitor General of a province in which proceedings to which this Act applies. . .

In the Province of Quebec there is no attorney-general right now, it is the minister of Justice who assumes this role because the Department has been re-organized. I wonder whether we should not take this change of situation into account.

Mr. Turner (Ottawa-Carleton): I believe he has the same title as I have, Mr. Valade. The minister of Justice is also Attorney General in the province of Quebec.

Mr. Valade: Well, in order to be more accurate in the definition of terms, I wonder whether we should not. . .

Mr. Turner (Ottawa-Carleton): As minister of Justice, he is in charge of the administration of justice just like the Attorney General here.

Mr. Valade: I do not want to discuss the technical aspects of the question, but I think that, as in the other provinces the Attorney General has both an executive and a legislative role, he has an integrated authority whereas in the bill you make a difference in the definition of the terms. I wonder if we could not add either “Solicitor General” or “Minister of Justice” for a province, in order to clarify the situation. Because, if I understand correctly, there seems to be a division of authority in the definition of Minister of Justice. He is also the Solicitor General and by

[Texte]

ment le rôle de solliciteur général alors qu'en incluant mon amendement, vous éviterez cette ambiguïté de définition.

M. Cantin: Monsieur le président, on n'emploie pas le terme «ministre de la Justice» même pour celui du Canada. Alors pourquoi l'utiliser pour celui du Québec.

M. Valade: Parce que ici vous avez une délégation de pouvoir. Le paragraphe 2, définit ce qu'est le procureur général, ce qu'on entend par procureur général. Et dans la province de Québec, le procureur général s'appelle le ministre de la Justice.

M. Turner (Ottawa-Carleton): Oui, d'accord, mais les fonctions sont différentes. C'est le procureur général qui représente la Couronne dans les procédures criminelles. Donc, il n'y a pas de confusion.

M. Valade: Pour les besoins de la définition, ne serait-il pas préférable d'ajouter ou «solliciteur général» ou «ministre de la Justice» d'une province?

M. Turner (Ottawa-Carleton): Je peux assurer monsieur Valade que le sous-ministre adjoint de la Justice, dans la province de Québec a été satisfait de la définition. Je crois que la définition décrit adéquatement la situation pour le Québec et les autres provinces. Il y a quelques provinces qui ont seulement un «procureur général.» Il y en a d'autres qui ajoutent maintenant le titre de «ministre de la Justice.»

En principe, il y a deux fonctions, le ministre de la Justice qui s'occupe de la réforme de la Loi, et de l'administration en termes généraux de la Loi. Le procureur général représente le peuple dans les procédures criminelles. Donc, comme tel, il est mentionné dans le bill. Je comprends votre point de vue mais je crois que cela causerait beaucoup d'ennuis que d'amender ainsi le bill.

M. Valade: Monsieur le président, si je comprends, dans une province où il n'y a pas de ministre de la Justice comme tel, c'est le procureur général qui agit avec ses pleins pouvoirs et son autorité. Dans la province de Québec, étant donné que le titre est «ministre de la Justice», le ministre de la Justice va déléguer son autorité au substitut du procureur général ou à un procureur délégué par lui.

M. Turner (Ottawa-Carleton): M. Bertrand, le premier ministre de la province, est le ministre de la Justice et pleinement procureur général, en même temps, avec tous les pouvoirs, même sans cet autre titre.

[Interprétation]

including my amendment you would avoid this ambiguity of definition.

Mr. Cantin: We do not use the title of Minister of Justice even the federal Minister. So why use it for the Quebec Minister.

Mr. Valade: Where you have a delegation of power. Because subsection 2 defines the meaning of Attorney General. And in Quebec, the Attorney General is called Minister of Justice.

Mr. Turner (Ottawa-Carleton): Yes, but the functions are different. It is the Attorney General who represents the Crown in criminal proceedings. Thus, there is no confusion.

Mr. Valade: For the sake of the definition, would it not be preferable to add Solicitor General or Minister of Justice of such and such a province?

Mr. Turner (Ottawa-Carleton): I can assure Mr. Valade that the Deputy Minister for Justice in Quebec finds this definition acceptable. I believe that the definition adequately describes the situation for Quebec and the other provinces. Some provinces only have an Attorney General, others now add the title Minister of Justice.

In principle, there are two functions, the Minister of Justice who is concerned with the amending of laws and the administration, in general of the law, and then there is the Attorney General who represents the people in criminal proceedings. So, it is mentioned as such in the bill. I understand your view point but I believe that amending the bill would cause a lot of trouble.

Mr. Valade: Mr. Chairman, if I understand correctly, in a province where there is no Minister of Justice as such, it is the Attorney General who acts with his full powers and his authority. In the province of Quebec, as we have the title of Minister of Justice, the Minister of Justice will delegate his authority to the substitute of the Attorney General or to an Attorney delegated by him.

Mr. Turner (Ottawa-Carleton): Mr. Bertrand, the premier of the province, is Minister of Justice and at the same time Attorney General with full powers, even without the other title.

[Text]

[Interpretation]

● 1700

M. Valade: C'était pour clarifier la situation du procureur général dans la province de Québec que le gouvernement a eu recours à ce changement de définition et décidé de le nommer ministre de la Justice. Alors, si le gouvernement veut clarifier cette définition, je me demande pourquoi ne pas le faire maintenant.

Mr. Valade: It was to clarify this role of the Attorney General in the Province of Quebec that the government changed this definition and decided to name him Minister of Justice. So, if the government wants to clarify this situation, I wonder why we should not do it now.

M. Turner (Ottawa-Carleton): Ce n'est pas seulement une clarification du titre, monsieur Valade, c'est une addition à ses fonctions. Parce que «ministre de la Justice» implique plus de responsabilités que procureur général. Il y a d'autres fonctions: la recherche, la réforme, etc.

Mr. Turner (Ottawa-Carleton): This is not only a question of clarification of the title, Mr. Valade, it is an addition to his functions. Because "Minister of Justice" implies more responsibilities than "Attorney General". These are other functions such as research, reform, and so on.

M. Valade: Merci.

Mr. Valade: Thank you.

M. Turner (Ottawa-Carleton): Mais l'administration de la justice est dans les mains du procureur général.

Mr. Turner (Ottawa-Carleton): But the administration of justice is within the competence of the Attorney General.

Le président: Monsieur Marceau?

The Chairman: Mr. Marceau?

M. Marceau: Je voudrais tout simplement faire une courte déclaration de principe, et appuyer ce que disait M. Hogarth et je voudrais bien que l'article soit assez clair et que surtout ses conséquences ne constituent pas une intrusion dans l'administration de la justice qui est un domaine réservé exclusivement aux provinces. Et je voudrais, bien sûr, que cet article-là ne devienne pas un moyen détourné d'intervenir dans un domaine de juridiction provinciale. Là-dessus, je pense que nous pouvons faire confiance au ministre, à son intégrité. Mais, je voudrais tout de même que sur ce point-là, les juridictions respectives soient très bien clarifiées et respectées.

Mr. Marceau: I simply wish to make a brief statement of principle and second what Mr. Hogarth said. And I would like this clause to be clear and especially see to it that its consequences will not interfere with the administration of justice which is a field that is exclusively reserved to the provinces and I wanted to be very sure that this clause does not become a means to intervene in a field under provincial jurisdiction. In respect to this I think we can trust the Minister and his integrity. But nevertheless, I would like to see that, with reference to this point, the respective jurisdictions be very clearly stated and also respected.

The Chairman: Mr. Marceau, does the previous explanation satisfy you? Does the Minister or his officials have anything else to add?

Le président: Monsieur Marceau, l'explication précédente répond-elle à votre question? Le ministre ou ses hauts fonctionnaires ont-ils quelque chose à ajouter à ce sujet?

M. Turner (Ottawa-Carleton): Monsieur Marceau, je crois que j'ai essayé d'expliquer l'affaire. Et je peux vous garantir que cet article ne change en aucune façon, la division juridictionnelle et constitutionnelle.

Mr. Turner (Ottawa-Carleton): Mr. Marceau, I think that I have tried to explain the situation. I can guarantee to you that this clause will not change in any way or form the jurisdictional and constitutional division.

M. Marceau: Cette réponse me satisfait pleinement.

Mr. Marceau: This answer fully satisfies me.

The Chairman: Shall Clause 2 carry?

Le président: L'article 2 est-il adopté?

Mr. Hogarth: Mr. Chairman, can we not hold clause 2 until we consider sections 487 and 489, because they are related? There are several things to be said about Section 489 particularly.

M. Hogarth: Ne pourrions-nous pas retenir l'alinéa 2 jusqu'à ce que nous étudions les articles 487 et 489 parce qu'ils sont apparentés. Il y a beaucoup de choses à dire au sujet de l'article 489 en particulier.

[Texte]

Mr. MacGuigan: Mr. Chairman, they are not indicated here as being relevant.

The Chairman: I think we can carry Clause 2 without any trouble as far as subsequent clauses are concerned.

Mr. Hogarth: The difficulty is this. If you peruse Section 489 Subsection (3), you will note it is concerned with the situation under which direct indictments may be preferred and by excepting the deputy attorney-generals from Section 489 Subsection (3) in Clause 2, you have prevented deputy attorney-generals from preferring direct indictments where there has been no preliminary hearing. I think, with respect, that these two clauses should be considered at the same time before they are both carried, because the Minister has indicated that he might not wish to do that.

The Chairman: I would like to get the opinion of the officials on that particular point—whether we could not carry Clause 2 as it is now and then revert to the other clause.

Mr. Turner (Ottawa-Carleton): We can meet that point when you get to it. It does not bear on the general definition.

The Chairman: Mr. Hogarth, you can always go back to Clause 2. If Clause 45 is to be amended along the lines that I believe you are going to suggest, then there will be a consequential amendment back to Clause 2, which I would think could be taken care of.

Mr. Hogarth: Yes, but it seems to me that these two clauses should be carried together. If we carry clause 2 without amendment and then we go on to Section 489 and decide Clause 2 should have been amended...

The Chairman: Mr. Hogarth, I accept the opinion of the Deputy. If we can come back, if necessary, and make an amendment to Clause 2, I think we still would be in order.

Mr. Hogarth: All right, with that reservation.

The Chairman: Shall Clause 2 carry?

Some hon. Members: Agreed.

Mr. MacGuigan: Mr. Chairman, are we not going to proceed through these clauses in the functional order? I am just trying to scan this functional sheet.

[Interprétation]

M. MacGuigan: Monsieur le président, on n'indique pas ici qu'ils sont pertinents.

Le président: Je pense que nous pouvons adopter l'article 2 sans que cela cause d'ennuis pour les articles qui suivent.

M. Hogarth: L'ennui, c'est que si on étudie 489, le paragraphe 3, il s'agit d'une situation aux termes de laquelle on peut intenter des accusations directes, mais en excluant le procureur général adjoint de l'article 489, paragraphe 3, vous avez empêché les procureurs généraux adjoints d'intenter des accusations directes quand il n'y a pas eu d'enquête préliminaire. Je crois, respectueusement, que ces deux articles devraient être étudiés simultanément avant qu'ils soient tous deux adoptés, parce que le ministre a indiqué que ce ne serait peut-être pas son intention de procéder ainsi.

Le président: Je voudrais avoir l'opinion des fonctionnaires sur ce point en particulier. Ne pourrions-nous pas adopter l'article 2 et revenir à l'autre article?

M. Turner (Ottawa-Carleton): Nous nous prononcerons là-dessus quand nous en viendrons à cet article-là. Il n'a rien à voir avec la définition générale.

Le président: Monsieur Hogarth, vous pouvez toujours revenir à l'article 2. Si l'article 45 doit être modifié selon ce que, je crois, vous allez proposer, il y aura donc une modification en conséquence se rapportant à l'article 2 dont on s'occuperait alors.

M. Hogarth: Oui, mais il me semble que ces deux articles devraient être adoptés en même temps. Si nous adoptons l'article 2 sans amendement, si nous procédons ensuite à l'article 489 et si nous décidons que l'article 2 aurait dû être modifié, alors ça ne va pas.

Le président: Monsieur Hogarth, j'accepte l'opinion de l'adjoint. Si nous pouvons revenir, si nécessaire, et faire un amendement à l'article 2, je crois que cela serait dans l'ordre.

M. Hogarth: D'accord, à cette condition.

Le président: L'article 2 est-il adopté?

Des voix: Adopté.

M. MacGuigan: Monsieur le président, n'allons-nous pas procéder à l'étude de ces articles selon leur ordre fonctionnel. J'essaie de jeter un coup d'œil sur cette feuille d'ordonnancement.

[Text]

The Chairman: What would you suggest as the next call, Mr. MacGuigan?

Mr. MacGuigan: I have not studied the relationship between clauses 2(1), 27 and 41, but if this outline is going to be of any use to us I would suggest that we do follow the order in which they are given to us.

Mr. Woolliams: Mr. Chairman, I am sure that you did not mean the whole Clause 2 to carry. What you meant is Clause 2(1) which involves section 2(2).

Clause 2(1) agreed to

On Clause 2(2)—Dwelling house.

Mr. Hogarth: Mr. Chairman, was this meant to include campers? Is a camper now a dwelling house?

Mr. Turner (Ottawa-Carleton): This is meant to broaden the meaning of dwelling house to include mobile homes that are being used as a residence.

Mr. Hogarth: I appreciate that is what it says, but the actual wording says:

(b) a unit that is designed to be mobile and to be used as a permanent or temporary residence and that is being used as such a residence;

Is it to include campers?

Mr. Christie: Yes.

Mr. Hogarth: That is fine.

Mr. Murphy: Occupied tents? It is a unit that is designed to be mobile and used as a temporary residence.

Mr. Turner (Ottawa-Carleton): Yes, but I do not think it is a building or structure.

Mr. Hogarth: Well, unfortunately, that is what the Porterfield-Springman cases were all about.

Mr. Turner (Ottawa-Carleton): But they were talking about the mobility, not the structure.

Mr. Hogarth: Why does it have to be used? For instance, it says "that is being used as such a residence". Suppose a person leaves his mobile home to go on another holiday some place or to take a trip. It is then not being used as such a residence. Say, he is gone for a month—or he has just parked it somewhere.

[Interpretation]

Le président: Qu'est-ce que vous suggérez pour les articles suivants, monsieur MacGuigan?

M. MacGuigan: Je n'ai pas étudié la relation entre les articles 2 (1), 27 et 41, mais si ce document doit nous servir, je proposerais que nous suivions l'ordre dans lequel ils nous sont donnés.

M. Woolliams: Monsieur le président, je suis certain que vous n'avez pas voulu dire que tout l'article 2 était adopté. Vous avez voulu dire que l'article 2 (1) qui rattache l'article 2 (2).

L'article 2 (1) est adopté.

Article 2 (2): *Maison d'habitation.*

M. Hogarth: Monsieur le président, ceci devait-il comprendre les campeurs? Est-ce que c'est considéré comme une maison d'habitation?

M. Turner (Ottawa-Carleton): Il s'agissait d'élargir le sens pour inclure les maisons mobiles qui servent d'habitation.

M. Hogarth: Je comprends que c'est ce que cela veut dire mais le texte lui-même dit:

b) une unité qui est conçue pour être mobile et pour être utilisée comme résidence permanente ou temporaire et qui est ainsi utilisée;

Est-ce que ça comprend les campeurs?

M. Christie: Oui.

M. Hogarth: C'est bien.

M. Murphy: Une tente habitée par exemple. C'est une unité qui est conçue pour être mobile et pour être utilisée comme résidence temporaire.

M. Turner (Ottawa-Carleton): Oui, mais je ne crois pas que ce soit un bâtiment, une construction.

M. Hogarth: Malheureusement, c'est ce sur quoi portaient les causes Porterfield-Springman.

M. Turner (Ottawa-Carleton): Mais ils parlaient de la mobilité et non de la structure.

M. Hogarth: Pourquoi faut-il qu'elle soit utilisée? Par exemple, on dit: «qui est utilisée comme résidence.» Supposons qu'une personne laisse sa maison mobile pour aller en vacances en quelque endroit ou pour faire un voyage, elle ne sert pas de résidence. Supposons qu'il parte pour un mois ou qu'il l'ait seulement stationnée quelque part.

[Texte]

Mr. Turner (Ottawa-Carleton): It does not have to be occupied all the time, Mr. Hogarth, as long as it is being used as a residence—just as your own dwelling house does not have to be occupied all the time as it is not now, I gather, except by your family. Therefore, if it is designed to be used as a residence and if it is being used as a residence, if he is out of the place at the time that does not forgive the offence.

Mr. Hogarth: But are not the other dwelling houses of a different status from that? Is it not so that the ordinary dwelling house—whether or not anyone lives there is immaterial—remains a dwelling house, but the mobile home has to be in the process of use as a residence? A mobile home might well be left for six months without being used as a residence, and I think it should be of the same status as other dwelling houses.

Mr. Gibson: Mr. Chairman, under (b) the reference to the use is predicated by the word “designed”, I take it. I think it really comes down to what extent...

Mr. Woolliams: Mr. Chairman, if you unplug all the holes, some of these leading defence counsel will not have any defence left.

An hon. Member: You will not have any Committee left, either.

Mr. Hogarth: There is something to be said, Mr. Chairman, for leaving it now and making the money out of it later.

Mr. Turner (Ottawa-Carleton): Well, this is a policy decision; moving the definition of dwelling house into mobile units and whether we wanted to open it up as wide as permanent units, and we had to put some limitation on it that not only would we extend it to mobile units, but the mobile unit had to be used as a residence. That was a policy decision. Now, how much farther you want to go...

Paragraph (14) of Section 2 agreed to.

Paragraph (22) of section 2, subclause (3) of the Bill agreed to.

On Clause 2 (4)—*Offensive Weapon*

Mr. Woolliams: Here is where we will have to watch ourselves.

Mr. Hogarth: That is the old definition.

[Interprétation]

M. Turner (Ottawa-Carleton): C'est tout à fait juste. Ça n'a pas à être occupé tout le temps, en autant que c'est utilisé comme résidence. Par exemple, vous n'avez pas à occuper votre maison d'habitation tout le temps. Mais, si c'est destiné à être utilisé comme une résidence, et si vous n'êtes pas toujours là, ce n'est pas considéré comme une infraction.

M. Hogarth: D'habitude, une maison d'habitation, qu'elle soit habitée ou non, reste une maison d'habitation. La maison mobile devrait être utilisée sans interruption comme résidence? Une maison mobile peut être laissée pendant six mois sans être utilisée comme résidence. Elle devrait alors être dans le même cas que les autres maisons d'habitation.

M. Gibson: Monsieur le président, au terme du paragraphe b), le mot «conçue» m'intrigue. Je pense qu'il s'agit de savoir dans quelle mesure on l'utilisera.

M. Woolliams: Monsieur le président, si vous débouchez tous les trous, certains parmi les meilleurs défenseurs ne trouveront plus aucun motif de plaider.

Une voix: Vous n'aurez plus de comité non plus.

M. Hogarth: Il y a quelque chose qu'il faudrait préciser, monsieur le président, «pour l'abandonner maintenant et en retirer de l'argent plus tard.»

M. Turner (Ottawa-Carleton): C'est-à-dire qu'il s'agit là d'une décision visant la politique à suivre. Changer la définition d'habitation pour la définition d'unité mobile, ainsi l'on étendrait cette définition jusqu'à des unités permanentes, pourtant il faudrait mettre une certaine limite. Non seulement la définition touchera les unités mobiles, mais les dites unités devront être utilisées comme résidences. Telle était la politique.

Maintenant, jusqu'où voulez-vous élargir cette définition?

L'alinéa (14) de l'article 2 est adopté.

L'alinéa (22) de l'article 2, sous-alinéa 3 est adopté.

Article 2, alinéa (4), *Armes offensives*.

M. Woolliams: Ici, il nous faudra faire attention.

M. Hogarth: C'est l'ancienne définition.

[Text]

Mr. MacGuigan: Could that not be considered along with the other section on firearms?

The Chairman: I think that is what we are trying to decide now.

Mr. Turner (Ottawa-Carleton): I suggest that would be a good idea.

The Chairman: We will stand paragraph...

Mr. Hogarth: Would a change of the word "and" from "or" at the end of subparagraph (a) be considered of any consequence? It is not marked as an amendment. As the Code now reads there is an "and" there; I do not think it makes any difference.

Mr. Turner (Ottawa-Carleton): We will check that one if you like.

Clause 2, subclause (4) stood.

Mr. Turner (Ottawa-Carleton): It might have been copied from Bill No. C-195.

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Clause 2 (5) agreed to.

On Clause 3—*Offences by public service employees*

Mr. Hogarth: Why did we pick on the public service employees?

An hon. Member: Because they go out of the country.

Mr. Hogarth: Lots of people go out of the country. Does it apply to provincial service employees?

The Chairman: Shall Clause 3 carry?

Mr. Hogarth: Just one moment, Mr. Chairman. I want to get the rationale behind this change which subjects the public service employees to the Act as opposed to anyone else that is out of the country.

Mr. Turner (Ottawa-Carleton): The Criminal Code generally does not have any jurisdiction outside the territorial limits of Canada. We certainly do not claim it. The reason we have extended it to public employees is that they may have committed an offence affecting the Consolidated Revenue Fund of Canada outside the country. We want the right to prosecute in Canada for an offence committed in Canada or outside of Canada. There is no question of double jeopardy or anything of that nature. That is all.

Mr. Hogarth: Am I correct in my interpretation of this that the foreign law would have to be absolutely the same as our law?

[Interpretation]

M. MacGuigan: Ne pourrait-on pas traiter de cet article en même temps que l'autre section visant les armes à feu?

Le président: Je pense que c'est ce que nous devrions décider maintenant.

M. Turner (Ottawa-Carleton): Il me semble que ce serait une bonne idée.

Le président: Nous allons réserver le paragraphe (4).

M. Hogarth: Est-ce que cela porterait à conséquence de changer le mot «ou» pour le mot «et» à la fin du sous-alinéa (a)? Il n'est pas indiqué comme amendement. Si le Code se lisait maintenant avec «et», il me semble que cela ne porterait pas à conséquence.

M. Turner (Ottawa-Carleton): Nous vérifions cela si vous le désirez.

L'article 2, alinéa (4) est réservé.

M. Turner (Ottawa-Carleton): Cet article a peut-être été copié sur le projet de loi C-195.

L'article 2, paragraphe 5 est adopté.

Article 3: *Infractions commises par des employés de la fonction publique.*

M. Hogarth: Pourquoi choisir les employés de la fonction publique?

Une voix: Parce qu'ils quittent le Canada.

M. Hogarth: Un tas de gens quittent le pays. Cette clause s'applique-t-elle aux employés des provinces?

Le président: L'article 3 est-il adopté?

M. Hogarth: Je voudrais avoir la raison de cette modification ici. Pourquoi touche-t-elle les fonctionnaires par comparaison aux autres Canadiens qui sont à l'extérieur du Canada?

M. Turner (Ottawa-Carleton): Le Code criminel d'une façon générale, ne possède aucune juridiction à l'extérieur du Canada et nous n'en réclamons pas. La raison pour laquelle on a étendu cette clause aux fonctionnaires est que s'ils ont commis un délit vis-à-vis du fonds du revenu consolidé à l'extérieur du Canada. Nous voulons avoir le droit de les poursuivre pour une offense commise au Canada ou à l'extérieur du pays. Il n'est pas question de doubles torts ou quoique ce soit de semblable.

M. Hogarth: Est-ce que la loi étrangère devrait être absolument la même que notre loi?

[Texte]

Mr. Turner (Ottawa-Carleton): No, we govern them under the provisions of our Criminal Code.

Mr. Hogarth: You see it says:

...commits an act or omission in that place that is an offence under the laws of that place and that, if committed in Canada, would be an offence punishable by indictment...

Is it your interpretation that the two offences would have to be the same?

Mr. Turner (Ottawa-Carleton): That is not the complex rule you know, Mr. Hogarth.

Mr. Hogarth: I appreciate that.

Mr. Turner (Ottawa-Carleton): That is right. We would not be able to bring the Canadian law into play unless there were a similar offence in the country of commission.

Mr. Hogarth: Let us pose a practical example. The English breathalyzer law is different from what ours is going to be, evidently. If someone committed an act in England that was an offence against that statute, or apparently an offence against that statute, which was not prosecuted in England, could we then prosecute him under our new section? I am not suggesting we would.

Mr. Turner (Ottawa-Carleton): There is the matter of judgment. We are not going to get mixed up in traffic laws.

Mr. Hogarth: I appreciate that. I am just pointing this out as an example and I appreciate we would not do that. Would we not have to prove the foreign law first?

Mr. Turner (Ottawa-Carleton): As I understand it—and I am giving you an off-the-cuff legal opinion—you have to prove that it would be an offence first under the foreign law and second under the Canadian law and substantially the same offence.

The Chairman: Shall Clause 3 carry?

Mr. Woolliams: Before this Clause is carried I have one question and I think it has been partly answered. When you use the term "Public Service Employment Act" employee, who does that cover in practice, Mr. Turner, all the civil servants, the ambassadors and so on?

Mr. Turner (Ottawa-Carleton): All federal civil servants.

[Interprétation]

M. Turner (Ottawa-Carleton): Non, nous suivons les dispositions de notre Code criminel.

M. Hogarth: On dit:

...commet dans ce lieu une action ou omission qui constitue une infraction en vertu des lois de ce lieu...

Est-ce que les deux délits seraient les mêmes selon les pays?

M. Turner (Ottawa-Carleton): C'est très complexe.

M. Hogarth: Je le conçois.

M. Turner (Ottawa-Carleton): C'est vrai. Nous ne pourrions pas appliquer la loi canadienne à l'extérieur, si le pays où l'infraction est commise ne reconnaît pas la même infraction.

M. Hogarth: Mais, donnez-nous un exemple pratique, par exemple, si la loi britannique sur l'ivressomètre est différente de la nôtre et qu'une personne commette un délit en Angleterre, qui est un délit qui n'est pas sujet à des poursuites en Angleterre. Cette personne pourrait-elle être poursuivie au terme de la Loi canadienne? Je pense que nous ne pourrions pas.

M. Turner (Ottawa-Carleton): C'est une question de jugement. Nous ne nous occupons pas de la circulation.

M. Hogarth: Il s'agit juste d'un exemple. Il faudrait d'abord poursuivre aux termes de la loi étrangère, ensuite selon la loi canadienne, et ensuite selon la loi sur la fonction publique.

M. Turner (Ottawa-Carleton): Comme je le comprends, il s'agirait bien de poursuivre d'abord en vertu de la loi étrangère, puis selon les lois canadiennes.

Le président: Est-ce que l'article 3 est adopté?

M. Woolliams: Une question simplement. On y a répondu de façon partielle. Quand on parle de la loi sur l'emploi dans la fonction publique, est-ce qu'il s'agit de tous les fonctionnaires, les ambassadeurs, etc...

M. Turner (Ottawa-Carleton): Tous les fonctionnaires fédéraux.

[Text]

Mr. Woolliams: What about ambassadors; are they covered by that?

Mr. Hogarth: They are immune.

Mr. Turner (Ottawa-Carleton): That would be very interesting, as a matter of fact. Take the case of Mr. Hogarth; if he were immune in the foreign country, could he be prosecuted under this section?

Mr. Hogarth: I will never be an ambassador.

An hon. Member: You know, we really believe you.

Mr. Turner (Ottawa-Carleton): We can check that out. I have a feeling that an ambassador is not covered under the Public Service Employment Act.

Mr. Hogarth: I do not think so, either.

Mr. Turner (Ottawa-Carleton): That is a good point, though. If the employee could plead diplomatic immunity in a foreign country, could he be prosecuted under this section? Well, I do not know.

Clause 3 agreed to.

On Clause 4—*Forgery of or uttering forged passport*

Mr. Hogarth: Are we dealing with all of that clause? The question I have to ask here, Mr. Turner, concerns Section 268. Paragraph (e) is incorporated by reference under the proposed subsection (4) of the section we are dealing with. It defines a false document, but nowhere in Section 58 is a false document referred to.

Mr. Turner (Ottawa-Carleton): Well, forgery itself incorporates the reference to the making of a false document.

Mr. Hogarth: I appreciate that, but you have not bothered to put forging a passport in with the forgery sections for some reason that is completely beyond me. By paragraph (b) of the proposed subsection (4), paragraph (e) of Section 268 applies *mutatis mutandis*. Will you please turn to Section 268, subsection (e): it defines a false document, but that is all it does. But nowhere is "false document" referred to in Section 268. Am I correct there?

Mr. J. A. Scollin (Criminal Law Section, Department of Justice): Forgery, presumably, is defined in terms of a Canadian offence at the moment. We are now defining an act happening outside Canada—forgery abroad.

[Interpretation]

M. Woolliams: Les ambassadeurs, sont-ils sujet à cet article?

M. Hogarth: Ils possèdent l'immunité diplomatique.

M. Turner (Ottawa-Carleton): Ce pourrait être très intéressant. En fait, si l'on prend le cas de M. Hogarth, si un ambassadeur jouit de l'immunité diplomatique à l'étranger, il peut être poursuivi en vertu de cet article.

M. Hogarth: Je ne serai jamais ambassadeur.

Une voix: Nous vous croyons.

M. Turner (Ottawa-Carleton): Je vérifierai ce point-là. Je pense qu'un ambassadeur ne relève pas de la loi sur l'emploi dans la fonction publique.

M. Hogarth: Je pense que vous avez raison.

M. Turner (Ottawa-Carleton): C'est une bonne question. Si un employé peut faire appel à l'immunité diplomatique, pourrait-il alors être poursuivi? Je n'en sais rien.

L'article 3 est adopté.

Article 4—*Faux ou usage de faux en matière de passeport.*

M. Hogarth: Monsieur le ministre, je vous pose une question au sujet de l'article 268. Le paragraphe e) incorpore évidemment l'alinéa (4) de l'amendement dont nous discutons actuellement. Il donne la définition d'un faux, mais à aucun endroit de l'article 58 il n'est mentionné un faux.

M. Turner (Ottawa-Carleton): Falsification comprend aussi la fabrication d'un faux.

M. Hogarth: J'apprécie votre réponse. Mais vous n'avez pas pris soin d'inclure la falsification d'un passeport dans la partie consacrée aux faux pour des raisons qui m'échappent.

L'article 268, alinéa e) donne une définition du «faux document», mais c'est tout. On ne parle nulle part à l'article 268 des «faux documents». N'est-ce pas?

M. J. A. Scollin (Section du droit criminel, ministère de la Justice): La fabrication de faux documents est un délit évidemment mais en termes canadiens. Si cet acte se produit à l'extérieur du Canada?

[Texte]

Mr. Hogarth: I appreciate that, Mr. Scollin, but you have not got my point. Section 58 says:

“58. (1) Every one who, while in or out of Canada,

(a) forges a passport, or . . .

is guilty of an indictable offence. . .

And then subsection (2) deals with the oral representations; subsection (3) deals with the onus of proof; subsection (4) goes on to say:

. . . paragraph (e) of section 268. . .

is

. . . applicable *mutatis mutandis*.

Mr. Turner: Mr. Hogarth, I might suggest to you, you see, it not only refers to Section 268, paragraph (e), which is your “false document”, but it refers to Section 309. Right? Now Section 309 says:

309. (1) Every one commits forgery who makes a false document, . . .

Mr. Hogarth: Yes, I appreciate that.

Mr. Turner: That is how it ties together, surely.

Mr. Hogarth: No, but the point is—Oh, your suggestion is that 268 refers to 309 and 310, and then by virtue of further incorporation, by reference, refers back to the passport section?

Mr. Turner: Right.

Mr. Hogarth: Why do we not just put the passports in with the forgery section? Surely a passport is a document. Surely if you forge a passport you have forged a document. Why do we not just add the extra-territorial jurisdiction to Section 309 and save all the work?

Mr. Turner: Mr. Hogarth, it is a matter of whether you want to classify it all under forgery or classify it all under passports. We had already a section dealing with passports and we had a section dealing with forgery. Now you can play it either way; we can expand the forgery section or we can expand the passport section. We decided to expand the passport section, I suppose, because it would be easier for somebody looking up the law to find it all . . .

Mr. Hogarth: Under “forgery”.

Mr. Turner: No, under “passports”. You would find it in passports. You would find out what the offences were in passports and then refer to the ingredients of the offence: the corroboration, the definition of “false documents” and the definition of “forgery”.

[Interprétation]

M. Hogarth: Je sais, monsieur Scollin, mais vous n’avez pas compris ce que je voulais dire. L’article 58 dit:

58 (1) Est coupable d’un acte criminel et passible d’un emprisonnement de quatorze ans, quiconque étant au Canada ou hors du Canada,

a) a fait un passeport, ou . . .

Et l’alinéa (2) parle des fausses déclarations; (3) dit que la preuve lui incombe; et l’alinéa (4) ajoute:

b) l’alinéa e) de l’article 268. . . s’applique *mutatis mutandis*.

M. Turner (Ottawa-Carleton): Mais on ne renvoie pas seulement à l’article 268, alinéa c), mais également à l’article 309, qui dit:

309(1) . . . est coupable quiconque fabrique un faux document . . .

M. Hogarth: Oui, je sais.

M. Turner (Ottawa-Carleton): Tout cela se tient.

M. Hogarth: 268 s’applique à 309 et 310, et ensuite, par référence, on revient à cet article sur les passeports.

M. Turner (Ottawa-Carleton): C’est exact.

M. Hogarth: Alors pourquoi ne pas inclure les passeports dans la section des faux documents? Le passeport est certainement un document. Si on fait un faux passeport on fait un faux document. Alors pourquoi ne pas inclure la juridiction extra-territoriale à cet article et éviter toute cette complication?

M. Turner (Ottawa-Carleton): Mais, monsieur Hogarth, je pense que l’on peut classer cela sous faux documents ou sous passeports. Nous avons déjà un article sur les passeports et un autre sur les faux documents. On pourrait procéder de deux façons, soit étendre la section des passeports ou celle des faux documents. Nous avons voulu étendre la section des passeports parce que ce serait plus facile à retrouver dans la Loi.

M. Hogarth: Sous «faux documents»?

M. Turner (Ottawa-Carleton): Non, sous «passeports». Les délits sont indiqués à l’article sur les passeports et on renvoie ensuite aux éléments connexes, la corroboration, la définition de «faux documents» et de «falsification.»

[Text]

Mr. Hogarth: It could have been done with one line but now we have four sections.

Mr. MacGuigan: I might also say, Mr. Chairman, that this section of the Criminal Code dealing with offences against the public order may be deemed to be the most appropriate one for a passport offence to fall under, and that the forgery section is classed in a slightly different way in the scheme of the present Criminal Code.

Mr. Turner: Mr. Woolliams did not want to get into a philosophical discussion so I prefer not to answer that one.

Clauses 4 and 5 agreed to.

The Chairman: Clause 6 brings up certain controversy. Would it be preferable to wait until Thursday before we get into Clause 6 on Firearms?

Clause 6 stood.

Mr. Hogarth: Mr. Chairman, may we have some direction as to how far we will go in each session?

The Chairman: It depends upon what questions the members ask.

Mr. Hogarth: I appreciate that, but would it not be advisable, for instance, to devote all of Thursday to firearms and stop when we finish the firearms section?

The Chairman: I do not think so; I hope to get through firearms fairly quickly, because if we set aside a day for each segment we will be here until next September.

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Mr. Hogarth: It was just a suggestion, sir.

The Chairman: Yes. We can see how it works. After firearms, are there any other clauses that we can dispatch?

Mr. Turner (Ottawa-Carleton): Clause 7 deals with gross indecency. I think we can get through that pretty quickly.

The Chairman: Yes, I think we can get that through by 6 o'clock. I will call Clause 7 on page 24.

On Clause 7.

Mr. Woolliams: Just before we get into that, Mr. Chairman, and so that we can follow this pretty carefully, are there any sections other than on page 24, such as 149, that we can cover at the same time?

[Interpretation]

M. Hogarth: On aurait pu le faire en une seule ligne mais nous sommes rendus avec quatre articles.

M. MacGuigan: L'article du Code criminel qui parle des délits contre l'ordre public serait plutôt désigné dans ce cas, et l'article sur les faux documents est classé différemment dans le nouveau Code.

M. Turner (Ottawa-Carleton): Je pense que c'est une discussion de principe dans laquelle je ne voudrais pas entrer.

Les articles 4 et 5 sont adoptés.

Le président: L'article 6 est assez controversé, je pense. Il sera préférable d'attendre à jeudi avant de procéder à l'étude de cet article.

L'article 6 est réservé.

M. Hogarth: Monsieur le président, est-ce que nous pouvons avoir des directives quant au nombre d'articles que nous étudierons.

Le président: Tout dépend des questions posées.

M. Hogarth: Je sais, mais ne serait-il pas souhaitable, par exemple, de consacrer la journée de jeudi aux armes à feu et nous arrêter ensuite?

Le président: Je ne crois pas. J'espère étudier la question des armes à feu assez rapidement, car si nous ne passons qu'une question par jour nous y serons jusqu'en septembre.

M. Hogarth: C'est simplement une suggestion que je faisais.

Le président: Oui, je comprends. Nous verrons comment tout ceci se déroulera. Outre les armes à feu, est-ce qu'il y a d'autres articles que nous pourrions adopter rapidement?

M. Turner (Ottawa-Carleton): L'article 7 traite d'indécence grossière et pourrait être adopté rapidement.

Le président: Oui, je crois que nous pensons y arriver avant 18 h 00. A la page 24, l'article 7.

Article 7.

M. Woolliams: Avant de commencer, et de façon à pouvoir suivre, y a-t-il d'autres articles que celui à la page 24, l'article 149, par exemple, qu'on pourrait étudier en même temps?

[Texte]

Mr. Turner (Ottawa-Carleton): If I am allowed, I think we can say in answer to that, Mr. Chairman, Clause 7 stands by itself.

Mr. Woolliams: That is what I thought.

The Chairman: Are there any comments on Clause 7?

An hon. Member: I think Mr. Turner should make a comment on this section.

Mr. Turner (Ottawa-Carleton): Mr. Chairman, this Clause amends the Criminal Code by adding a new Section—149A—to exempt from the offences of buggery or bestiality under Section 147 of the Criminal Code and from acts of gross indecency under Section 149 of the Criminal Code acts committed in private between a husband and his wife, or between two persons each of whom is over twenty-one years old provided that in each case both parties consent. Acts are not considered to be in private if committed in a public place or if more than two persons take part or are present. The section says, as well, that a person is not considered to have consented if his consent has been obtained by extortion or if he is feeble-minded, insane, or an idiot or an imbecile or that the other person knows, or has reason to believe, that he is so.

The purpose, Mr. Chairman, of this section is to remove from the criminal law acts committed in private which, no matter how distasteful or repugnant to most of us, are properly left, in our view, to private morality rather than dealt with under the criminal law. This section does not imply in any way, in our opinion at least, a moral condonation or a moral approval of the acts exempted from the criminal law. Fornication is in the minds of most people immoral, but it is not within the criminal law; adultery is considered in the minds of most people immoral and it is not within the purview of the criminal law, and we do not thereby promote or condone or approve of that conduct.

Before I relinquish the opportunity you have given me, Mr. Chairman, I want to refer to some remarks that were made in England when a similar matter was being studied there under the Wolfenden Report. You will recall that on August 24, 1954, a committee of 12 men and three women under the Chairmanship of Sir John Wolfenden was appointed in the United Kingdom to consider the law and practice relating to homosexual offences and the treatment of persons convicted of such offences.

The Committee devoted 32 days to the examination of witnesses and met another additional 30 days, and on August 12, 1957,

[Interprétation]

M. Turner (Ottawa-Carleton): On pourrait répondre en disant que l'article 7 forme un article complet.

M. Woolliams: C'est ce que je pensais.

Le président: Est-ce qu'il y a des commentaires au sujet de l'article 7?

Une voix: Je crois que M. Turner devrait en faire un.

M. Turner (Ottawa-Carleton): Monsieur le président, cet article modifie le Code criminel en ajoutant un nouvel article, l'article 149-A, pour exempter de la sodomie et la bestialité aux termes de l'article 14 du Code criminel et des actes de grossière indécence aux termes de l'article 149, les actes de la vie privée entre conjoints ou entre adultes consentants qui ont plus de 21 ans, évidemment pourvu que les parties soient consentantes. Les actes ne sont pas privés s'ils sont faits dans des endroits publics ou s'il y a plus de deux personnes en cause ou présentes. L'article ajoute que si le consentement est obtenu par extorsion ou s'il s'agit d'aliénés, d'idiot ou d'imbéciles, et que l'autre personne qui commet l'acte le sait, ou a de bonnes raisons de le croire.

Le but de cet article est d'éliminer du Code criminel les actes commis en privé qui, quels que soient leurs désagréments ou leur répugnance pour la plupart d'entre nous, sont, de notre avis, une question de moralité personnelle et ne tombent pas sous le coup de la Loi. Cet article n'implique nullement, du moins à notre avis, ni une condamnation ni une approbation morale des actes qui sont exemptés du Code criminel. La fornication est, à l'esprit de la plupart des gens, immorale mais ne tombe pas sous le coup du Code criminel. L'adultère est, pour la plupart des gens, considéré comme immoral, et, néanmoins, il ne tombe pas sous le coup de la Loi et nous n'approuvons et n'encourageons pas pour autant une telle conduite.

Avant de laisser partir cette opportunité qui m'a été donnée, j'aimerais me référer à quelques remarques qui ont été faites en Angleterre lorsqu'une question similaire a été abordée. Vous vous souviendrez que le 24 octobre 1954, un comité de 12 hommes et 3 femmes, sous la présidence de Sir John Wolfenden, a été constitué au Royaume-Uni pour étudier la question des délits d'homosexualité et le traitement des personnes trouvées coupables de tels délits.

Le Comité a étudié, a examiné des témoins pendant 32 jours et s'est réuni pendant encore 30 jours, et le 12 août 1957, a remis son

[Text]

the Committee delivered its Report to Secretary of State for the Home Department and the Secretary of State for Scotland. They dealt with the whole issue and I want to just refer to some of their observations.

The committee reported the following to be the more serious arguments in favour of continuing to provide that homosexual acts between consenting adults in private remain criminal. The arguments that were used to maintain the criminal law over this type of conduct were really three, in so far as the evidence presented before that committee.

- (i) it menaces the health of society;
- (ii) it has damaging effects on family life;
- (iii) a man who indulges in these practices with another man may turn his attention to boys.

Each of these arguments was rejected by the committee. The committee found no evidence to support the view that homosexual activity

is a cause of the demoralisation and decay of civilisations, and that therefore, unless we wish to see our nation degenerate and decay, such conduct must be stopped, by every possible means.

The report went on to say:

we cannot feel it right to frame the laws which should govern this country in the present age by reference to hypothetical explanations of the history of other peoples in ages distant in time and different in circumstances from our own.

With respect to the second contention, that homosexual behaviour between males has a damaging effect on family life, the committee found this may well be true and deplored this damage to what we regard as the basic unit of society. But the committee went on to say:

We have had no reasons shown to us which would lead us to believe that homosexual behaviour between males inflicts any greater damage on family life than adultery, fornication or lesbian behaviour. These practices are all reprehensible from the point of view of harm to the family, but it is difficult to see why on this ground male homosexual behaviour alone among them should be a criminal offence.

I want to say, with respect to lesbian behaviour, that Section 149 of the Canadian Criminal Code makes no distinction between male and female persons. When we are

[Interpretation]

rapport au secrétaire d'État du ministère de l'Intérieur et le secrétaire d'État de l'Écosse. Ils ont étudié l'ensemble du problème et je voudrais citer quelques-unes de leurs observations.

Le comité a fait rapport que les arguments les plus sérieux pour maintenir un délit criminel en ce qui concerne les actes homosexuels commis privément entre deux adultes. Il y avait trois arguments majeurs en ce qui concernent le témoignage qui a été apporté à ce Comité.

- (i) elle menace la santé de la société;
- (ii) elle a des effets nuisibles sur la vie de famille;
- (iii) un homme qui embarque dans ces pratiques avec un autre homme peut tourner son attention vers des jeunes garçons.

Chacun de ces arguments a été rejeté par le Comité. Le Comité n'a trouvé aucune preuve pour appuyer le fait que l'activité homosexuelle:

est une cause de démolisation et de décadence des civilisations, et que, en conséquence, à moins que nous voulions voir votre nation dégénérer et tomber en décadence, une telle conduite doit être arrêtée par tous les moyens possibles.

le rapport continue:

il ne semble pas qu'il soit justifiable d'établir des lois qui devraient diriger ce pays à cette époque en nous rapportant à des explications hypothétiques de l'histoire d'autres peuples en des temps éloignés et différents quant aux circonstances des nôtres.

Deuxièmement, le comportement homosexuel entre hommes a un effet nuisible sur la vie familiale, le Comité a trouvé que cela était peut-être vrai et a déploré ce fait, en ce qui concerne l'unité de la société. Mais le comité a poursuivi:

Nous n'avons aucune raison qui nous amènerait à penser que le comportement homosexuel entre hommes peut faire plus de mal à la vie familiale que le comportement de lesbiennes, la fornication ou l'adultère. Tout cela est mauvais pour la vie de la famille. Mais il est difficile de voir pourquoi le comportement homosexuel entre hommes devrait être un délit.

En ce qui concerne le comportement lesbien, la section 49 du Code criminel canadien ne fait pas de différence entre hommes ou femmes. Et lorsque l'on parle de grossière indécence

[Texte]

dealing with gross indecency here we are contemplating, under the purview of this amendment, homosexual acts between men or lesbian acts between women.

Mr. Woolliams: That differentiates our law, as it stands now, from the British law?

Mr. Turner (Ottawa-Carleton): Yes.

Mr. Woolliams: Right.

Mr. Turner (Ottawa-Carleton): Finally, with respect to the contention that a man who indulges in homosexual practices with another man may turn his attention to boys, the committee came to this conclusion—and I want to quote from the report if I might, Mr. Chairman.

Our evidence, in short, indicates that the fear that the legalisation of homosexual acts between adults...

I do not like the word "legalisation"—I do not accept that word.

...will lead to similar acts with boys has not enough substance to justify the treatment of adult homosexual behaviour in private as a criminal offence, and suggests that it would be more likely that such a change in the law would protect boys rather than endanger them.

That is about all I would like to say at the moment, Mr. Chairman. I want to thank you again for the courtesy of the Committee.

Mr. Woolliams: May I ask a few questions.

The Chairman: Mr. Rondeau is first.

M. Rondeau: Nous avons déjà fait voir notre point de vue au sujet de l'article 149-A. Puisque le comité va ajourner bientôt, je voudrais aujourd'hui attirer votre attention sur la composition de l'alinéa a) du paragraphe (2). A mon sens, le texte dit exactement le contraire du Bill.

Un acte est réputé ne pas avoir été commis dans l'intimité s'il est commis dans un lieu public ou si plus de deux personnes y prennent part ou y assistent;

Lorsqu'on ajoute les trois mots «ou y assistent», selon moi, cela veut dire que des personnes peuvent faire l'acte et deux autres peuvent y assister; et ce serait encore dans l'intimité.

Si je comprends bien la langue française, il me semble qu'on élargit les cadres de l'intimité. Non seulement deux personnes peuvent y prendre part, mais peuvent également y assister. Comment pouvons-nous assister à une chose, si nous n'y prenons pas part? Ainsi, nous serions encore dans

[Interprétation]

ici, nous parlons d'actes homosexuels qu'il s'agisse d'hommes ou de femmes.

M. Woolliams: Ce qui fait donc une différence entre notre loi et la loi britannique.

M. Turner (Ottawa-Carleton): Oui.

M. Woolliams: Très bien.

M. Turner (Ottawa-Carleton): Finalement, en ce qui concerne le fait que l'homme qui s'embarque dans des pratiques homosexuelles peut tourner son attention vers des jeunes, le comité a conclu et je cite du rapport, monsieur le président.

...La preuve indique que la légalisation des actes homosexuels entre adultes...

Je n'aime pas le mot «législation», je ne l'accepte pas.

...amènera des actes similaires avec des jeunes garçons n'est pas suffisante pour justifier le traitement du comportement des homosexuels adultes dans la vie privée comme un délit, et suggère qu'un tel changement protégerait plutôt que nuirait aux jeunes.

C'est à peu près tout ce que j'ai à dire pour le moment, monsieur le président. Je veux de nouveau remercier le Comité de sa courtoisie.

M. Woolliams: Puis-je demander une question?

Le président: M. Rondeau est le premier.

Mr. Rondeau: Mr. Chairman, concerning Clause 149A, we have already indicated our point of view. As the Committee is going to adjourn soon, I would like to draw your attention to the composition of the text in 2 (a) which seems to say exactly the contrary of what is meant by the bill.

(a) an act shall be deemed not to have been committed in private if it is committed in a public place, or if more than two persons take part or are present;

To my mind, when you add the words "or are present" that means that two persons may do the act and two others may be present, and this would still be in private.

If I understand French properly, it seems that you are widening the scope of privacy. Two persons can not only take part in the act, but can also be onlookers. How is it possible. Be present without participating? Hence, this would mean that they are still in private, and the bill would therefore say exactly the

[Text]

l'intimité; le Bill serait donc le contraire de ce que l'on a voulu dire, à savoir que les homosexuels sont des gens normaux s'ils sont seulement deux pour commettre l'acte. Mais, selon le texte, nous sommes maintenant rendus à quatre personnes; et c'est encore dans l'intimité.

J'ai bien étudié le texte, je l'ai bien pesé et j'ai consulté des personnes de langue française. Si demain matin, la cour était saisie d'un cas d'homosexualité où la police aurait arrêté les deux personnes concernées et deux autres personnes qui assistaient, il serait difficile pour le juge de condamner les personnes qui y assistaient. Le texte de loi veut exactement dire le contraire de ce que le premier ministre et même le ministre ont voulu dire à maintes reprises, à savoir que cela concerne seulement deux personnes âgées d'au moins 21 ans. Je suis d'accord sur ce point. J'aimerais avoir des éclaircissements de la part du ministre avant de faire mes autres remarques.

Mr. Turner (Ottawa-Carleton): Prétendez-vous constater qu'il y a des différences entre les deux textes? Pensez-vous que la version française est plus intime ou moins intime que la version anglaise?

Mr. Rondeau: La version anglaise aussi est ambiguë. Étant donné que les deux versions sont légales, on peut invoquer le texte français pour les besoins d'une cause; ceci fera jurisprudence et on ne pourra rien faire vis-à-vis ce texte de loi.

Peut-être que le texte anglais porte moins à confusion que le texte français; mais dans le texte français, c'est ce qui m'a frappé la première fois que j'ai lu ce Bill. S'il y a plus que deux personnes, il semble que c'est alors un acte public. Mais les personnes qui y assistent sont exemptées et c'est encore dans l'intimité. C'est pourquoi, monsieur le ministre, je me pose de sérieuses questions. Car le but du Bill est justement le contraire.

Mr. Turner (Ottawa-Carleton): Je vais consulter mes experts au sujet de la version française, et je vais aussi examiner le texte quant à sa qualité.

Mr. Cantin: Monsieur le président, le député pourrait-il suggérer un texte pour préciser ce qu'il veut dire?

Mr. Rondeau: Je n'approuve pas le principe, mais on devrait rayer ces trois mots.

Si vous voulez me permettre d'aller à un autre paragraphe où l'on parle de l'avortement à la page 42, je me demande si l'on n'a

[Interpretation]

contrary of what we wanted to say, that is to say that homosexuals are normal people if they are only two to commit the act. But according to the text we are no longer two but four persons and this is still considered as private life.

I have studied the text, I have reflected on the matter, and I have consulted experts in the French language. If tomorrow morning the court had to deal with a case of homosexuality where the police would have arrested the two persons concerned and two other persons who were present, the judge would be in a difficult position to condemn those who were present. The text of the Act says exactly the contrary of what the Prime Minister and even the Minister wanted to say on many occasions, namely that this only concerns two persons who are at least 21 years old. I agree on this point. I would like to have some clarifications from the Minister before making other comments.

Mr. Turner (Ottawa-Carleton): Do you mean that there is a difference between the two texts? Do you think that the French text is more private or less private than the English version?

Mr. Rondeau: The English text is also ambiguous. Since the two versions are legal, you could apply the French text for the needs of a specific case and then this would create a precedent and then you will not be able to do anything about that legal text.

The English text is perhaps not as misleading, as the French text, but this is what struck me the first time I read the bill. When there are more than two persons, it seems that it is then a public act. But those persons who are present are exonerated and the act is still done in private. This is why, Sir, I have serious doubts. Because the purpose of the bill is precisely the contrary.

Mr. Turner (Ottawa-Carleton): I think I will consult my experts regarding the French text and I shall also study the text regarding its quality.

Mr. Cantin: Mr. Chairman, could the member suggest a text to specify what he means?

Mr. Rondeau: I do not approve of the principle, but these three words should be deleted.

If you will allow me to go to another subsection where reference is made to abortion on page 42. I wonder whether the French has

[Texte]

pas tout simplement fait une traduction française. Par exemple, on parle à sept différentes places...

Mr. Hogarth: On a point of order, Mr. Rondeau, perhaps the Minister would check this matter with his French experts.

M. Rondeau: Je voudrais également qu'il vérifie le paragraphe sur l'avortement à la page 42. Ainsi, il ne sera pas obligé de consulter de nouveau ses experts lorsque nous étudierons ce paragraphe.

M. Turner (Ottawa-Carleton): Quels mots, monsieur Rondeau?

M. Rondeau: Par exemple, à l'article 18...

The Chairman: Mr. Rondeau, we will have to adhere to Clause 7 at this particular time.

M. Rondeau: Le ministre pourrait consulter ses experts avant que le comité discute du but de cet article. Car, ces trois mots «ou y assistent» changent complètement l'article.

M. Turner (Ottawa-Carleton): On va vérifier la version française, mais c'est mon impression que si deux hommes commettent l'acte d'homosexualité, et si une autre personne y assiste, ce n'est plus un acte privé selon cette loi.

M. Rondeau: Peut-être dans votre pensée, monsieur le ministre...

M. Turner (Ottawa-Carleton): C'est ce que je pense, mais je vais vérifier...

M. Rondeau: Le texte dit le contraire de votre pensée.

M. Cantin: S'ils sont présents.

M. Turner (Ottawa-Carleton): Si une troisième personne est présente, l'acte entre les deux n'est plus privé.

M. Rondeau: Monsieur le ministre, le juge qui sera appelé à juger une telle cause ne pourra pas se baser sur l'interprétation. Il devra juger d'après les mots «ou y assistent»; ceux qui assistent ne sont pas ceux qui participent. L'acte se fait donc encore dans l'intimité.

The Chairman: Mr. McCleave. Mr. Woolliams.

Mr. Woolliams: I would just like to ask some general questions and then I will come to the point I am going to make. As far as I understand it—and I stand corrected—there

[Interprétation]

not simply been translated from the English. For instance, reference is made in seven different places...

M. Hogarth: Un rappel au règlement, monsieur Rondeau. Le ministre pourrait peut-être vérifier cette question avec ses experts français.

Mr. Rondeau: I would like him to check also the subsection on page 42 dealing with abortion. This way, he will not be obliged to consult his experts again when we shall be studying this subsection.

Mr. Turner (Ottawa-Carleton): What words, Mr. Rondeau?

Mr. Rondeau: For instance, in clause 18.

Le président: Monsieur Rondeau, nous devons nous limiter à l'article n° 7 pour le moment.

Mr. Rondeau: The Minister could consult his experts before the Committee discusses the purpose of this clause. Because these three words "or are present" completely change the meaning of the clause.

Mr. Turner (Ottawa-Carleton): We are going to check the French text, but it is my impression that if two men commit a homosexual act and there is another person present, it is no longer a private act according to the terms of this Act.

Mr. Rondeau: Perhaps that is what comes to your mind, sir...

Mr. Turner (Ottawa-Carleton): This is what I think, but I am going to check...

Mr. Rondeau: The text says the contrary of what you think.

Mr. Cantin: If they are present.

Mr. Turner (Ottawa-Carleton): If a third person is present, the act between the two persons is no longer private.

Mr. Rondeau: The judge who will have to make a decision in a cause of this nature will not be able to base himself on interpretation. He will have to decide according to the words "or are present"; those who are present are not those who participate. Hence, the act is still done in private.

Le président: Monsieur McCleave, monsieur Woolliams.

M. Woolliams: J'aimerais poser des questions d'ordre général pour commencer, puis j'en viendrai au point que je veux soulever. Si je comprends bien, il n'y a pas d'article du

[Text]

is no section in the Code that makes adultery on the part of the husband or wife a crime under the Criminal Code of Canada.

Mr. Turner (Ottawa-Carleton): You are right.

Mr. Woolliams: And it does not matter whether the husband or the wife is 18 or 21. Right. And yet—I know the Minister does not like this term—but you have legalized a husband and wife, no matter whether they are 18 or 21; if they commit a homosexual act they do not fall under an offence under 147 or 149 of the Code. That is correct.

Mr. Turner (Ottawa-Carleton): Let us have that again, Mr. Woolliams.

Mr. Woolliams: Well, if a husband and wife are both under 21 or one is under 21, if they commit a homosexual act, providing they do it in private—I am taking all the circumstances...

Mr. Turner (Ottawa-Carleton): All right. That is right, it would not be an offence.

Mr. Woolliams: Right.

Mr. Turner (Ottawa-Carleton): A husband and wife can no longer commit an offence under 147 or 149.

Mr. Woolliams: Right. That is all right. Well, I have dealt with that. And any two persons, each of whom is 21 years of age or more, providing they are 21 and the act, whether it is an indecent act or whether it is a homosexual act, is committed in private, then they have not committed an offence under either 147 or 149.

Mr. Turner (Ottawa-Carleton): That is right. Over 21, free consent, in private.

Mr. Woolliams: If any two persons who were not husband and wife committed an indecent act and were under 21, they would not be exempt under 147 or 149, would they?

Mr. Turner (Ottawa-Carleton): That is correct.

Mr. Woolliams: Right. So providing they are married, if they do an indecent act, even if they are under 21, they are home free; but if they are not married and over 21...

Mr. Turner (Ottawa-Carleton): Between themselves.

Mr. Woolliams: Right. In private.

[Interpretation]

Code qui considère l'adultère comme un crime tant pour l'homme que pour la femme.

M. Turner (Ottawa-Carleton): En effet.

M. Woolliams: Cela n'a pas d'importance que l'homme ou la femme aient 18 ou 21 ans. Néanmoins, et je sais que le ministre n'aime pas ce terme, vous avez légalisé le mariage, que le mari ou la femme aient 18 ou 21 ans, et s'ils commettent un acte d'homosexualité, ce n'est plus un délit dans le cadre des articles 147 ou 149 du Code, n'est-ce pas?

M. Turner (Ottawa-Carleton): Reprenez cela, monsieur Woolliams.

M. Woolliams: Si le mari et sa femme ont moins de 21 ans, ou que l'un des deux a moins de 21 ans, et qu'ils commettent un acte d'homosexualité, pourvu que ça se fasse en privé, j'envisage toutes les circonstances...

M. Turner (Ottawa-Carleton): En effet, ça ne serait pas un délit.

M. Woolliams: Bien.

M. Turner (Ottawa-Carleton): Le mari et la femme ne peuvent pas commettre de délit en vertu des articles 147 ou 149.

M. Woolliams: Donc, dans le cas de deux personnes ayant plus de 21 ans, qu'il s'agisse d'indécence ou d'homosexualité, du moment que c'est dans l'intimité, n'est pas un délit en vertu des articles 147 ou 149.

M. Turner (Ottawa-Carleton): En effet. Plus de 21 ans, consentement libre, intimité.

M. Woolliams: Si deux personnes de moins de 21 ans qui ne sont pas mari et femme commettent un acte de grossière indécence, elles tombent sous le coup des articles 147 ou 149, n'est-ce pas?

M. Turner (Ottawa-Carleton): En effet.

M. Woolliams: Donc, pourvu qu'elles soient mariées, si elles commettent un acte indécent, même si elles ont moins de 21 ans, elles sont libres de le faire; mais si elles ne sont pas mariées et qu'elles ont plus de 21 ans...

M. Turner (Ottawa-Carleton): Entre elles.

M. Woolliams: Et dans l'intimité.

[Texte]

Mr. Turner (Ottawa-Carleton): The fact that you are married does not justify any other offence.

Mr. Woolliams: Right.

Mr. Turner (Ottawa-Carleton): Between themselves.

Mr. Woolliams: That is the point I want to make. I wonder if we could have a definition of "private". What do you mean by "private"? Because there has been a lot of newspaper talk about private and these clubs and one thing and another, about indecent acts and homosexuality. Could we have a definition of what you really mean? Of course, we are dealing with policy as well as legal interpretation. What do you mean by "private"?

Mr. Hogarth: I do not know if it makes any difference to my friend's point, but conspiracy to commit adultery by false representations is an offence and so is it to live in adultery in the presence of a child, and so on. They are both offences.

Mr. Woolliams: Oh, I am well aware of that. We were talking about...Thank you very much, Mr. Hogarth.

Mr. Turner (Ottawa-Carleton): Just the definition again, Mr. Woolliams. You have asked, when is it in private?

Mr. Woolliams: Yes, but what is it like? You have "an act shall be deemed not to have been committed in private if it is committed in a public place".

Mr. Turner (Ottawa-Carleton): "Public place" is defined in the Code.

Mr. Woolliams: What section?

Mr. Turner (Ottawa-Carleton): Section 130.

Mr. Woolliams: Well, let us just take a moment.

Mr. Turner (Ottawa-Carleton): All right. I tried to suggest hypothetically how a court would be bound. First of all, they would look at the words "in private" and they would have to decide what, in the terms of a reasonable man, "in private" means, according to common sense, and then in doing that they would be guided by the words in the definition:

(a) an act shall be deemed not to have been committed in private if it is committed in a public place

Now, what is a "public place"? Section 130, paragraph b,

[Interprétation]

M. Turner (Ottawa-Carleton): Le fait d'être marié ne justifie pas d'autres délits.

M. Woolliams: En effet.

M. Turner (Ottawa-Carleton): Entre elles.

M. Woolliams: Voilà ce que je voulais savoir. Maintenant pourriez-vous nous donner une définition de ce que vous voulez dire par «intimité»? On a beaucoup parlé de ce mot «intimité», des clubs privés, etc. Est-ce que nous pourrions avoir une définition, parce que nous parlons de politique aussi bien que d'interprétation juridique?

M. Hogarth: Je ne sais pas si cela change la question de mon collègue, mais une conspiration pour commettre un adultère, sous de fausses représentations, est un délit, de même que l'adultère devant les enfants, etc.

M. Woolliams: Je sais très bien cela. Nous parlions de . . . Merci beaucoup, monsieur Hogarth.

M. Turner (Ottawa-Carleton): Pour ce qui est de la définition, monsieur Woolliams, vous avez demandé quand se trouve-t-on dans l'intimité?

M. Woolliams: Qu'est-ce que c'est au juste? On dit: «un acte est réputé ne pas avoir été commis dans l'intimité s'il est commis dans un lieu public».

M. Turner (Ottawa-Carleton): «Lieu public» est défini dans le Code.

M. Woolliams: Quel article?

M. Turner (Ottawa-Carleton): Article 130.

M. Woolliams: Arrêtons-nous un instant.

M. Turner (Ottawa-Carleton): Bien. J'ai essayé de faire voir comment le tribunal serait lié. Tout d'abord, il étudierait le mot «intimité», puis il devrait décider ce que signifie «intimité» pour l'homme raisonnable, selon le sens commun; pour faire cela, il se reporterait aux mots de la définition:

«Un acte est réputé ne pas avoir été commis dans l'intimité s'il est commis dans un lieu public.»

Alors, qu'est-ce qu'un «lieu public»? Article 130, alinéa b:

[Text]

Public place includes any place to which the public have access as of right or by invitation, express or implied.

It includes but is not limited to. You still have to look at the definition and the court will have to say, "Is this a public place?" Any place to which the public has access as of right or by invitation, express or implied, would be a public place. Then the court would go on further and say: "Well, now, it is not in private either if it takes place among more than two persons or if more than two persons are present. We are going into that later. So those are the steps the court would have to take..."

Mr. Woolliams: We can come to this quickly. These clubs it is alleged exist in which homosexuals meet, even if there was no one there but the two people in the club where they have an invitation or at least they have the right of the public and they committed an act in such a club, whether it was in the City of Toronto or the City of Vancouver—I had better include Calgary because I might hurt the nicety of some of my friends—coming to the point, they would then be deemed to be in a public place.

Mr. Turner (Ottawa-Carleton): Yes.

Mr. Woolliams: So that basically what it does, what it boils right down to, we know what we are talking about. A private place, of course, is a private home and if the act was committed in private in a private home, there would be no problem.

Mr. Turner (Ottawa-Carleton): Exactly—between consulting adults over 21.

Mr. Woolliams: You say it must be any two persons, or if more than two persons take part or are present... In other words, you have confined it to two persons even in a private place.

Mr. Turner (Ottawa-Carleton): Right. Even in a private place.

Mr. Woolliams: So it is really two persons in a private home...

Mr. Turner (Ottawa-Carleton): Right, or a private place...

Mr. Woolliams: ...alone.

An hon. Member: Are they alone?

Mr. Woolliams: Now, can I ask this. What places have you in mind, what places do you have in mind outside of private homes, a paid

[Interpretation]

«Un lieu public comprend tout endroit où le public a accès de plein droit ou par invitation exprimée ou implicite.

Ce n'est pas limitatif. Vous devez encore vous reporter à la définition et le tribunal devra déclarer: «Il s'agit d'un lieu public». Tout lieu auquel le public a accès de plein droit ou par suite d'une invitation, explicite ou implicite, est un lieu public. Ensuite, un peu plus loin, le tribunal poursuivrait en disant: «ce n'est pas privé non plus, s'il y a plus de deux personnes, si plus de deux personnes sont présentes». Nous y reviendrons. Voilà donc les différentes étapes que le tribunal...

M. Woolliams: Ces clubs qui existent, semble-t-il, et où des homosexuels se retrouvent, même s'il n'y a que deux personnes qui ont reçu des invitations pour y aller ou encore qui ont le droit d'y aller, et qui commettent un acte semblable, peu importe si c'était dans la ville de Toronto, ou la ville de Vancouver, il faudrait inclure aussi Calgary donc, elles seraient considérées comme étant dans un endroit public.

M. Turner (Ottawa-Carleton): Oui.

M. Woolliams: Donc, fondamentalement ce que cela veut dire, c'est une maison particulière, et si c'est commis dans une maison particulière, il n'y a pas de problème.

M. Turner (Ottawa-Carleton): Si cet acte est commis entre deux adultes consentants de plus de 21 ans.

M. Woolliams: Vous dites par deux personnes. Autrement dit, il faut deux personnes, même dans un lieu privé.

M. Turner (Ottawa-Carleton): En effet.

M. Woolliams: Il s'agit donc de deux personnes dans une maison privée...

M. Turner (Ottawa-Carleton): Oui, ou un lieu privé.

M. Woolliams: ...seule,

Une voix: Sont-ils seuls?

M. Woolliams: Qu'est-ce que vous avez à l'esprit? Quels endroits avez-vous à l'esprit? En dehors d'un motel, d'un hôtel, ou d'une

[Texte]

motel, a paid hotel, that would be a private place under the Act, from a practical point of view?

Mr. Turner (Ottawa-Carleton): Do you want me to go through an exhaustive list, Mr. Woolliams?

Mr. Woolliams: Just a few.

Mr. Turner (Ottawa-Carleton): Are you suggesting that I define in what circumstances this will be permissible? I do not think it is possible. Certainly, as you have mentioned, private homes. The public does not have access there by right or by invitation.

Mr. Woolliams: Right.

Mr. Turner (Ottawa-Carleton): A hotel room? You have paid for the hotel room and you have it for the evening and they do not have access by right or by invitation. Not the public. The owner of the hotel might if he has a passkey. But I cannot go any further than that. I do not want to be in the position of delimiting freedom from the Criminal Law in a situation like this.

That takes us out of the public place and back to the words "in private". I would not like to hazard an opinion on that.

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Mr. Deakon: This is on the same point. Conversely, a car may be in a public place, such as a drive-in.

Mr. Turner: That is right. I would not hazard an opinion on it.

Mr. Deakon: What of a situation, for example, where a person has been charged under a liquor control act or some other act similar to that, and his place has been declared a public place? You have been batting around the definition of "public" and "private". In other words, if I am correct, you are saying that if it is not public it is private. You are discussing a private dwelling house.

Mr. Turner (Ottawa-Carleton): Not necessarily. It may not be a public place and still not be in private. Do you follow me? There are three steps there. Is it not in private? It will not be in private if it is in a public place, but if it is not in a public place, it is not necessarily private. Do you follow me?

Mr. Deakon: What happens if it is declared by the courts to be a public place?

[Interprétation]

maison privée, quels autres endroits pourrions-nous avoir?

M. Turner (Ottawa-Carleton): Voulez-vous que je vous donne une liste complète?

M. Woolliams: Quelques exemples tout simplement.

M. Turner (Ottawa-Carleton): Vous voulez que je définisse dans quelles circonstances tout cela sera permis? Je ne crois pas que ce soit possible. Vous avez mentionné les maisons privées, où le public n'a pas accès de plein droit ou par invitation.

M. Woolliams: En effet.

M. Turner (Ottawa-Carleton): Une chambre d'hôtel? Vous avez payé et le public n'y a pas accès de plein droit ou par invitation, sauf le propriétaire, s'il a un passe-partout. Je ne peux aller plus loin que cela. Je ne veux pas essayer d'établir les limites des endroits où cela serait permis. Cela nous enlève d'un endroit public pour nous ramener dans l'«intimité». Je ne peux pas vous donner une opinion là-dessus.

M. Deakon: Une voiture peut se trouver dans un lieu public, comme un ciné-parc.

M. Turner (Ottawa-Carleton): En effet. Mais je ne peux pas vous donner une opinion là-dessus.

M. Deakon: Prenons le cas d'une personne qui aurait une licence pour vendre de l'alcool et que lui dirait que c'est privé; on dirait non parce que c'est un endroit privé. Ce peut ne pas être un endroit public mais néanmoins ne pas être un endroit privé. Autrement dit, si ce n'est pas public, c'est privé. Vous parlez d'une maison d'habitation.

M. Turner (Ottawa-Carleton): Pas nécessairement. Ce n'est peut-être pas un endroit public ni un endroit privé. Les gens peuvent se trouver dans l'intimité mais c'est tout de même interdit parce que c'est un endroit public et vice versa.

M. Deakon: Que se passe-t-il si les tribunaux déclarent qu'il s'agit d'un endroit public?

[Text]

Mr. Turner (Ottawa-Carleton): You mean, if the liquor ordinance, say...

Mr. Deakon: No, not the liquor ordinance; the...

Mr. Turner (Ottawa-Carleton): I am advised by Mr. Christie that provincial legislation could not come up with a definition for federal purposes.

The Chairman: Mr. McCleave?

Mr. McCleave: My question is to the Minister and his officials. I notice that the consent section is parallel to the consent section as it involves the crime of rape. This is correct, is it not?

Mr. Turner (Ottawa-Carleton): That is correct.

Mr. McCleave: Did you consider that the words "or force" should also be used as non-consent? The reason for my asking is that rape, in itself, as a word or a concept, does involve force, but the homosexual act may, or may not, involve force.

You have used words, threats and fear of bodily harm, which again can be expressed by words, but no words may be spoken. The fellow has his arm twisted behind his back and that is the start of it.

Mr. Turner (Ottawa-Carleton): We think enough of that point to want to consider it, Mr. Chairman.

Mr. Hogarth: Surely if an act is made without consent—the rape definition says nothing about force...

Mr. McCleave: No, it does not.

Mr. Hogarth: It just says it is an act without consent and...

Mr. McCleave: My point is that the officials and the Minister in drawing up the legislation have used the parallel of rape to apply to the homosexual act, but rape in itself, or part of the concept of rape, is the use of force; whereas the homosexual act does not have the concept of force in it. That is why I suggest that we should probably add in this Subclause (2)(b)(i) the words "or force."

Mr. Hogarth: The definition of rape says nothing about force. It just says...

Mr. McCleave: That is what I am saying.

[Interpretation]

M. Turner (Ottawa-Carleton): Vous voulez dire, si le décret sur les alcools, disons...

M. Deakon: Non, pas le décret sur les alcools...

M. Turner (Ottawa-Carleton): M. Christie me dit que les lois provinciales ne peuvent fournir une définition aux fins des lois fédérales.

Le président: Monsieur McCleave?

M. McCleave: Ma question s'adresse au ministre et à ses collaborateurs. Je vois que l'article relatif au consentement est parallèle à l'article sur le consentement dans le cas du viol. C'est exact, n'est-ce pas?

M. Turner (Ottawa-Carleton): C'est exact, en effet.

M. McCleave: Avez-vous envisagé que les mots «ou de la force» devraient aussi être utilisés pour définir le non-consentement? Si je pose cette question, c'est que le viol, en soi, qu'il s'agisse du mot ou de l'idée, suppose l'usage de la force, alors que l'acte homosexuel peut impliquer ou ne pas impliquer l'usage de la force. Vous avez parlé de menaces ou de peur de lésions corporelles, où l'on peut avoir à prononcer des paroles, mais cela peut aussi se faire en silence. On peut tordre le bras à quelqu'un derrière son dos, et c'est ainsi que cela peut commencer.

M. Turner (Ottawa-Carleton): Ce point est assez important pour que nous l'examinions, monsieur le président.

M. Hogarth: Assurément, si un acte se comment sans consentement—la définition du viol ne mentionne pas l'usage de la force...

M. McCleave: Non.

M. Hogarth: On dit simplement que c'est un acte commis sans consentement et...

M. McCleave: Ce que je veux dire, c'est que les fonctionnaires et le ministre, en rédigeant le projet de loi, ont appliqué les mêmes principes à l'acte homosexuel qu'au viol. Mais le viol en soi, ou l'idée de viol, implique l'usage de la force, ce qui n'est pas le cas de l'acte homosexuel. C'est pourquoi je propose que l'on ajoute, dans le sous-alinéa (i) de l'alinéa b) du paragraphe (2) les mots «ou de la force».

M. Hogarth: La définition du viol ne mentionne pas l'usage de la force. On dit simplement...

M. McCleave: C'est bien ce que je dis.

[Texte]

Mr. Hogarth: Is that not the same?**Mr. McCleave:** The concept of rape is...**Mr. Turner (Ottawa Carleton):** You have to define violence—*referre*, which is the Latin, for “take”—to take by force.**Mr. Murphy:** Is that not only because of the definition?**The Chairman:** Mr. Valade?**Mr. Valade:** Mr. Chairman, I would like to have some information from the Minister. I wish to refer to a very important problem which does fall under this article but which might not be considered illegal. How could the authorities cope with the problem of homosexuality in prisons? This is now a very crucial issue. I understand that in a cell in a prison there are usually two inmates. These are adults. There is an article that is being studied by the senatorial committee in the United States on homosexuality which has brought up this serious problem in prisons and the violence to which young inmates are being subjected by older and perverted inmates to induce them to commit homosexual acts.

Under this law these people would be operating legally and there is no way by which the prison or other authorities can cope with the problem.

Mr. Christie: This provision merely exempts. It is an exemption provision in relation to Sections 147 and 149, but under the Penitentiary Act the penitentiary authorities have the right to make regulations governing the conduct of prisoners within the institution. Under that power, and notwithstanding this exempting section, they can describe what will be prohibited and provide punishment for it, including this sort of thing.

I might say that we took the trouble to check this very point with the Commissioner of penitentiaries and he is satisfied that that will not raise a problem with the penitentiaries.

Mr. Woolliams: In addition to that, if I might interrupt, it would be a public place in the sense that it uses the word “right”, and “right” surely carries the definition of a legal right or a legal...**Mr. Turner:** You can get in it, but it is pretty hard to get out, I understand!**Mr. Woolliams:** Yes.

[Interprétation]

M. Hogarth: N'est-ce pas la même chose ici?**M. McCleave:** L'idée de viol est...**M. Turner (Ottawa Carleton):** Il faut définir la violence: *Referre*, qui, en latin, signifie «prendre», prendre de force.**M. Murphy:** N'est ce pas seulement à cause de la définition?**Le président:** Monsieur Valade?**M. Valade:** Monsieur le président, j'aimerais demander quelques renseignements au Ministre. Je voudrais parler d'un problème très important; un acte qui tombe sous le coup de cet article, mais qui n'est peut-être pas illégal. Comment les autorités pourraient-elles résoudre le problème de l'homosexualité dans les prisons? C'est à l'heure actuelle une question cruciale. Je crois bien que dans les prisons, il y a généralement deux prisonniers par cellule. Il s'agit d'adultes. Un article relatif à l'homosexualité qu'étudie actuellement le comité du Sénat des États-Unis a soulevé ce problème très grave qui se pose dans les prisons, où des prisonniers pervers d'un certain âge font usage de violence envers les jeunes détenus pour les amener à commettre des actes d'homosexualité.

Selon ce projet de loi, ce genre de chose serait légale, et la prison ou les autres autorités ne pourraient rien faire.

M. Christie: Cette disposition n'est qu'une exemption relative aux articles 147 et 149; mais en vertu de la Loi sur les pénitenciers, les autorités pénitenciaires ont le droit d'établir des règlements régissant la conduite des prisonniers à l'intérieur des institutions. En vertu de ce pouvoir, elles peuvent, malgré cette exemption, décrire ce qui sera défendu et prévoir des punitions, y compris dans des cas de ce genre.

Je puis ajouter que nous avons pris la peine de vérifier cette question avec le commissaire des pénitenciers, et il a dit que cela ne poserait pas de problème dans le cas des prisons.

M. Woolliams: De plus, si vous me permettez d'intervenir, il s'agirait d'un endroit public, puisqu'on parle de droit, et que le mot «droit» implique assurément la définition d'un droit légal ou...**M. Turner (Ottawa Carleton):** C'est facile d'y entrer mais assez difficile d'en sortir, paraît-il!**M. Woolliams:** Oui.

[Text]

Mr. Turner (Ottawa-Carleton): For example, smoking is not illegal, but it is under certain circumstances in penitentiaries.

Mr. Valade: My point was that under paragraph (b) nothing but disciplinary action can be taken by the prison authorities. There is nothing to give the authorities some legal control of this very important manifestation of the problem.

I notice from today's newspaper that this case is actually being studied in the United States. It is a very very important issue.

I believe that we may be really opening the door to abuses in jails, because even though disciplinary action within the jails can be implemented it does not necessarily give the authorities power to take legal action against these people. It is one of the most crucial problems within jails, and this law does not deal with it. I say it absolves those people within jails. We are pressing for the establishment of law and order in this country, but we are allowing this abuse to go on in prison by this paragraph (b) of proposed clause 149A.(1).

Mr. Christie: No. Notwithstanding this proposed amendment, under the Penitentiary Act and regulations this sort of conduct can be dealt with in the penitentiaries. This does not affect that at all, in our view.

Mr. Valade: Certainly, Mr. Turner, there may, or may not, have been some form of deterrent previously, giving the authorities power to prosecute this pervert who had attacked a young inmate. But this provision could not now be implemented. It could be by disciplinary action, but not through the courts.

Mr. Christie: When you speak of the pervert attacking the young inmate, he is doing the act against the young inmate's consent and he is outside the scope of the section anyway.

Mr. Valade: Not consenting; he may be subjected to threats.

Mr. Woolliams: Then that is under (b).

Mr. Valade: Yes; but how are you going to establish threats?

Mr. Hogarth: How about being paid for it, forgetting about threats?

Mr. Valade: This is a very important issue. The inmate within the walls of a prison is

[Interpretation]

M. Christie: Par exemple, il n'est pas illégal de fumer, mais cela peut l'être, dans certaines circonstances, dans les pénitenciers.

M. Valade: Ce que je voulais dire, c'est qu'en vertu de l'alinéa b), tout ce que peuvent faire les autorités pénitenciaires, c'est prendre des mesures disciplinaires. Rien ne leur donne un pouvoir juridique sur cet aspect très important du problème. Je vois dans le journal d'aujourd'hui que l'on étudie justement ce cas aux États-Unis. C'est un problème extrêmement grave.

Nous sommes en train, à mon avis, d'ouvrir la porte aux abus dans les prisons, car, malgré les mesures disciplinaires qui peuvent être appliquées dans les prisons, cela ne donne pas nécessairement aux autorités pouvoir de poursuivre ces gens en justice. C'est l'un des problèmes les plus cruciaux qui se posent dans les prisons, et ce projet de loi n'en parle pas. Je le répète, il absout les gens qui se trouvent en prison. Nous essayons d'établir la loi et l'ordre dans ce pays, mais nous permettons, par l'alinéa b) de l'article 149A proposé, que des abus de ce genre se poursuivent dans les prisons.

M. Christie: Non. Malgré la modification proposée, on peut, en vertu de la Loi et du règlement sur les pénitenciers, punir ce genre de conduite dans les prisons. Cela n'a rien à voir avec le présent article, à notre avis.

M. Valade: Bien sûr, monsieur le ministre, il y avait peut-être auparavant quelque chose qui pouvait décourager ce genre de conduite, en donnant aux autorités pouvoir de poursuivre la personne perverse qui attaquait un jeune détenu. Mais maintenant, on ne pourrait plus appliquer ces dispositions. On pourrait prendre des mesures disciplinaires, mais pas poursuivre ces gens en justice.

M. Christie: Lorsque vous parlez de l'homme pervers qui attaque le jeune détenu, cela se fait de toute façon sans le consentement de ce dernier, et le présent article ne s'applique donc pas.

M. Valade: Le jeune détenu peut ne pas être consentant, mais céder sous le coup des menaces.

M. Woolliams: Ce cas est prévu à l'alinéa b).

M. Valade: Oui, mais comment allez-vous établir qu'il y a eu des menaces?

M. Hogarth: Et s'il n'y a pas de menaces, mais des offres d'argent?

M. Valade: C'est là un problème très important. Dans les prisons, le détenu est sou-

[Texte]

subjected to all kinds of threats, violence, force, or blackmail, and he will certainly not go into court, or tell what happened. He will admit that he consented even although he did not. This legislation opens the door to this abuse within the poison cell itself.

Mr. Christie: It seems to me that that is more a defect in the ability to get evidence to prosecute offences committed within prisons than a defect in the law.

● 1800

Mr. MacGuigan: I take it, Mr. Chairman, this is precisely the hon. member's point. Jails might be held to be public places, but if they are not so held then it may be impossible to get the kind of evidence that would result in a conviction.

Mr. Valade: Yes that is it.

The Chairman: Gentlemen, it is six o'clock. Is it the wish of the Committee to adjourn on this happy note and come back on Thursday at 9.30 a.m.?

Mr. Valade: Do I understand that I will continue on Thursday morning?

The Chairman: Certainly.

Mr. Gilbert: Will we deal with firearms on Thursday, or are we going to...

The Chairman: I think the idea would be to complete this section and then go back to firearms.

Mr. McCleave: May I ask, a question, Mr. Chairman? Mr. Nicholson, the former Commissioner of the Royal Canadian Mounted Police, saw me today, along with Mr. Passmore, I think, who represent some four associations concerned with gun law. I believe they have two simple points to make. I do not know whether any policy about the hearing of witnesses was established earlier when I was not here. We receive a lot of material in the mail, and I presume that in some cases such as abortion it has been pretty well scouted anyway and we would not want to open it up to a whole lot of witnesses. But it seems to me that in this gun law thing we have the viewpoint of both gun associations and of a very experienced former policeman as to the effect of the section. I hope that perhaps the Steering Committee would want to decide this because members have a disposition to get out to eat. But I hope they will consider hear-

[Interprétation]

mis à toutes sortes de menaces, à la violence, à la force, ou au chantage, et, bien sûr, il ne va pas s'adresser au tribunal ou raconter ce qui s'est passé. Il admettra facilement qu'il était consentant même si ce n'est pas vrai. Ce projet de loi ouvre la porte à ce genre d'abus dans les murs mêmes de la prison.

M. Christie: Il me semble qu'il s'agit de la difficulté qu'il y a à obtenir des preuves en vue d'engager des poursuites par suite de délits commis dans les prisons, plutôt que d'une lacune de la loi.

M. MacGuigan: Je suppose, monsieur le président, que c'est là justement ce dont veut parler l'honorable député. On pourrait considérer les prisons comme des endroits publics, mais si elles ne sont pas considérées comme telles, il peut devenir impossible d'obtenir le genre de preuve qui permettrait une accusation.

M. Valade: Oui, c'est cela.

Le président: Messieurs, il est six heures. Est-ce que le comité veut ajourner sur cette note joyeuse et revenir jeudi matin à 9 h. 30?

M. Valade: Est-ce que j'aurai toujours la parole jeudi matin?

Le président: Oui, bien sûr.

M. Gilbert: Allons-nous passer à la question des armes à feu, jeudi, ou bien...

Le président: Je pense qu'il faudrait en finir avec cet article, puis nous occuper de la question des armes à feu.

M. McCleave: J'aimerais poser une question, monsieur le président. M. Nicholson, l'ancien commissaire de la Gendarmerie royale du Canada, est venu me voir aujourd'hui, avec un certain M. Passmore, je crois; ils représentent quatre associations qui se préoccupent de la loi relative aux armes à feu. Ils ont deux questions simples, il me semble, à signaler. Je ne sais si l'on a décidé tout à l'heure, avant que je n'arrive, de la marche à suivre en ce qui concerne l'audience des témoins. Nous recevons beaucoup de documents par la poste et dans certains cas, celui de l'avortement, par exemple, on a déjà bien éclairé le terrain, et nous ne voulons pas entendre toutes sortes de témoins. Mais en ce qui concerne la question des armes à feu, il me semble que nous pourrions demander l'avis des associations qui se préoccupent de ce problème et d'un ancien agent de police très expérimenté, pour ce qui est des effets de

[Text]

ing these two witnesses without committing themselves to witnesses beyond this particular Section.

[Interpretation]

l'article proposé. J'espère que peut-être le comité de direction pourra prendre une décision à cet égard, car les membres du comité sont en train de partir dîner. Mais j'espère que l'on envisagera d'entendre ces deux témoins sans faire appel à d'autres témoins et sans que ces témoins nous parlent d'autres questions, et s'en tenir à ceci.

● 1802

Mr. Woolliams: My I make a suggestion here, Mr. Chairman? Could Mr. McCleave come to the next Steering Committee meeting and make that suggestion?

The Chairman: Or he can relate it to you, Mr. Woolliams. We have discussed this question, Mr. McCleave, and we certainly have not taken the position that there will be no witnesses. We will discuss the pros and cons in the Steering Committee and try to come to a decision.

Mr. McCleave: Will this be held tomorrow? Because I should really advise Mr. Nicholson, if he is to be here on Thursday, to get some brief statement ready.

The Chairman: We hope to have the Steering Committee meeting probably tomorrow.

M. Woolliams: Me permettez-vous de faire une observation ici, monsieur le président? M. McCleave ne pourrait-il pas se présenter à la prochaine séance du sous-comité directeur et soumettre la recommandation?

Le président: Ou pourrait-il vous la soumettre, monsieur Woolliams. Nous avons débattu cette question M. McCleave, et nous n'avons certainement pas pris de mesures pour éliminer les témoins. Nous étudierons le pour et le contre de cette histoire lors de la séance du sous-comité directeur et ferons tout notre possible pour en arriver à une décision.

M. McCleave: Cette séance aura-t-elle lieu demain? Car, je devrais, en effet, avertir M. Nicholson, s'il doit venir jeudi, de préparer certains résumés de rapports.

Le président: Nous espérons avoir une séance du sous-comité-directeur demain.

HOUSE OF COMMONS

CHAMBRE DES COMMUNES

First Session
Twenty-eighth Parliament, 1968-69

Première session de la
vingt-huitième législature, 1968-1969

STANDING COMMITTEE
ON

COMITÉ PERMANENT
DE LA

JUSTICE AND LEGAL AFFAIRS

JUSTICE ET DES QUESTIONS
JURIDIQUES*Chairman*

Mr. Donald R. Tolmie

*Président*MINUTES OF PROCEEDINGS
AND EVIDENCEPROCÈS-VERBAUX ET
TÉMOIGNAGES**No. 8**

THURSDAY, MARCH 6, 1969

LE JEUDI 6 MARS 1969

Respecting

BILL C-150

Concernant le

BILL C-150

Criminal Law Amendment Act, 1968.

Loi de 1968 modifiant le droit pénal.

*Appearing*Minister of Justice and
Attorney General of Canada.

Hon. John N. Turner

*Ont comparu*Ministre de la Justice et
Procureur général du Canada.

Parliamentary Counsel

M. Maurice Ollivier, c.r.

Légiste et conseiller parle-
mentaire

WITNESSES—TÉMOINS

*(See Minutes of Proceedings)**(Voir Procès-verbal)*

THE QUEEN'S PRINTER, OTTAWA, 1969

L'IMPRIMEUR DE LA REINE, OTTAWA, 1969

STANDING COMMITTEE ON
JUSTICE AND LEGAL
AFFAIRS

COMITÉ PERMANENT
DE LA
JUSTICE ET DES QUESTIONS
JURIDIQUES

Chairman
Vice-Chairman

Mr. Donald Tolmie
M. André Ouellet

Président
Vice-président

and Messrs.
et Messieurs

Blair,
Brewin,
Cantin,
¹ Chappell,
Deakon,
Gilbert,

Guay (*Levis*),
Hogarth,
MacEwan,
MacGuigan,
Marceau,
McCleave,

McQuaid,
Murphy,
Rondeau,
Schumacher,
Valade,
Woolliams—20.

(Quorum 11)

Le secrétaire du Comité

ROBERT V. VIRR

Clerk of the Committee

¹ Replaced Mr. Weatherhead on March 6, 1969.

¹ Remplace M. Weatherhead le 6 mars 1969.

MINUTES OF PROCEEDINGS

PROCÈS-VERBAUX

(Traduction)

THURSDAY, March 6, 1969.
(9)

Le JEUDI 6 mars 1969.
(9)

The Standing Committee on Justice and Legal Affairs met this day at 9:37 a.m., the Chairman, Mr. Tolmie, presiding.

Le Comité permanent de la justice et des questions juridiques se réunit ce matin à 9 h. 37, sous la présidence de M. Tolmie président.

Members present: Messrs. Blair, Cantin, Chappell, Deakon, Gilbert, Guay (*Lévis*), Hogarth, MacEwan, MacGuigan, Marceau, McCleave, McQuaid, Murphy, Ouellet, Rondeau, Schumacher, Tolmie, Valade, Woolliams—(19).

Présents: MM. Blair, Cantin, Chappell, Deakon, Gilbert, Guay (*Lévis*), Hogarth, MacEwan, MacGuigan, Marceau, McCleave, McQuaid, Murphy, Ouellet, Rondeau, Schumacher, Tolmie, Valade, Woolliams—(19).

Also present: Messrs. Beaudoin, Gervais, Gibson, Lambert (*Bellechasse*), Matte, Tétrault, M.P.s.

De même que: MM. Beaudoin, Gervais, Gibson, Lambert (*Bellechasse*), Matte, Tétrault, députés.

Appearing: The Honourable John N. Turner, Minister of Justice and Attorney General.

Aussi présent: L'honorable John N. Turner, ministre de la Justice et procureur général.

Witnesses: From the Department of Justice: Mr. D. H. Christie, Deputy Minister and Mr. John A. Scollin, Q.C., Director, Criminal Law Section.

Témoins: Du ministère de la Justice: M. D. H. Christie, sous-ministre, et M. John A. Scollin, c.r., directeur de la Section du droit criminel.

The Committee resumed discussion of Bill C-150.

Le Comité reprend l'examen du Bill C-150.

The Committee held a lengthy discussion as to whether expert witnesses were to be called on specific portions of the Bill.

Le Comité délibère longuement pour décider si l'on demandera à des experts de venir témoigner relativement à certaines sections du Bill.

After discussion it was agreed that the Steering Committee would again discuss this point before the next meeting.

Après débat, il est convenu que le comité de direction parlera de nouveau de cette question avant la prochaine séance.

The Chairman called clause 7.

Le président met en délibération l'article 7 du Bill.

Moved by Mr. Valade, that clause 7 of Bill C-150 be deleted.

M. Valade propose que l'on supprime l'article 7 du Bill C-150.

After discussion and, with the consent of the Committee, the motion was permitted to stand.

Après débat, et avec l'accord du Comité, la motion est réservée.

Clause 7 Stand.

L'article 7 du Bill est réservé.

Clause 8 was carried.

L'article 8 du Bill est adopté.

The Chairman called clause 6 and the Minister made brief remarks.

It was agreed that clause 6 be considered in conjunction with clause 2(4).

Clause 2(4) was carried.

Clause 2 was carried *in toto*.

Under clause 6(1) sections 82(1) paragraphs a, b, c, d and f of the Act were carried and paragraphs e and g allowed to stand.

Under clause 6(1) section 82(2) of the Act was carried.

Under clause 6(1) section 83 of the Act was carried.

Under clause 6(1) section 84 was allowed to stand.

Under clause 6(1) section 85 was allowed to stand.

Under clause 6(1) section 86 was carried.

Under clause 6(1) section 87 was allowed to stand.

Under clause 6(1) section 88 was carried.

Under clause 6(1) section 89 was carried.

Under clause 6(1) section 90 was carried.

At 12.05 p.m. the Committee adjourned until 3:30 p.m. this date.

AFTERNOON SITTING (10)

The Standing Committee on Justice and Legal Affairs met this day at 3.37 p.m., the Chairman, Mr. Tolmie, presiding.

Members present: Same as morning sitting.

Also present: Messrs. Isabelle and Gibson, Members of Parliament.

Le président met en délibération l'article 6 du Bill, et le Ministre fait une brève déclaration.

Il est convenu d'étudier l'article 6 du Bill conjointement avec le paragraphe (4) de l'article 2 du Bill.

Le paragraphe (4) de l'article 2 du Bill est adopté.

L'article 2 du Bill est adopté *in toto*.

Au paragraphe (1) de l'article 6 du Bill, les sous-alinéas a), b), c), d) et f) du paragraphe (1) de l'article 82 de la Loi sont adoptés, et les sous-alinéas e) et g) sont réservés.

Au paragraphe (1) de l'article 6 du Bill, le paragraphe (2) de l'article 82 est adopté.

Au paragraphe (1) de l'article 6 du Bill, l'article 83 de la Loi est adopté.

Au paragraphe (1) de l'article 6 du Bill, l'article 84 de la Loi est réservé.

Au paragraphe (1) de l'article 6 du Bill, l'article 85 de la Loi est réservé.

Au paragraphe (1) de l'article 6 du Bill, l'article 86 de la Loi est adopté.

Au paragraphe (1) de l'article 6 du Bill, l'article 87 de la Loi est réservé.

Au paragraphe (1) de l'article 6 du Bill, l'article 88 de la Loi est adopté.

Au paragraphe (1) de l'article 6 du Bill, l'article 89 de la Loi est adopté.

Au paragraphe (1) de l'article 6 du Bill, l'article 90 de la Loi est adopté.

A midi 5, le Comité s'ajourne jusqu'à 3 h. 30 de l'après-midi.

SÉANCE DE L'APRÈS-MIDI (10)

Le Comité permanent de la justice et des questions juridiques se réunit cet après-midi à 3 h. 37, sous la présidence de M. Tolmie.

Présents: Les mêmes députés qu'à la séance du matin.

De même que: MM. Isabelle et Gibson, députés.

Appearing: Honourable John N. Turner,
Minister of Justice and Attorney General.

Witnesses: Same as morning sitting.

The Chairman reported on the discussions held during the Steering Committee meeting held during the lunch hour.

As a result Mr. Gilbert moved and it was agreed *That:*

- (1) a maximum of six expert witnesses would be called;
- (2) their evidence must be pertinent to the technical and legal aspects of the bill rather than philosophical;
- (3) witnesses must be approved by the Steering Committee and called as early as possible;
- (4) the Minister is to be excused at his own discretion when official duties demand.

And the debate continuing:

Under clause 6(1)

section 91 of the said Act was carried
92 of the said Act was carried
93 of the said Act was carried
94 of the said Act was carried
95 was allowed to stand
96 was carried

section 97 less 97(2) (a), 97(5), 97(7)
was carried

section 98 was carried

section 98A less 98A(5), 98A(6),
98A(10), 98A(11) was carried

section 98B was carried

section 98C was carried

section 98D was carried

section 98E was carried

section 98F was allowed to stand

Aussi présent: L'honorable John N. Turner, ministre de la Justice et procureur général.

Témoins: Les mêmes qu'à la séance du matin.

Le président donne un compte rendu des délibérations de la réunion du comité de direction qui a eu lieu à l'heure du déjeuner.

Par suite de cela, et sur la proposition de M. Gilbert, *il est convenu Que:*

- (1) on ne fera venir pour témoigner que six experts au maximum;
- (2) leurs témoignages devront porter sur les aspects technique et juridique du Bill, et non sur l'aspect théorique;
- (3) le choix des témoins sera soumis à l'approbation du comité de direction, et l'on fera venir ces témoins aussitôt que possible;
- (4) le Ministre pourra s'absenter, à sa discrétion, lorsque ses fonctions officielles l'exigeront.

Le débat se poursuivant:

Au paragraphe (1) de
l'article 6 du Bill,

l'article 91 de ladite Loi est adopté
92 de ladite Loi est adopté
93 de ladite Loi est adopté
94 de ladite Loi est adopté
95 est réservé
96 est adopté

l'article 97, à l'exception du sous-alinéa a) du paragraphe (2), ainsi que des paragraphes (5) et (7), est adopté

l'article 98 est adopté

l'article 98A, à l'exception des paragraphes (5), (6), (10) et (11), est adopté

l'article 98B est adopté

l'article 98C est adopté

l'article 98D est adopté

l'article 98E est adopté

l'article 98F est réservé

section 98G was carried

l'article 98G est adopté

section 98H was carried

l'article 98H est adopté

Clause 6(2) was carried.

Le paragraphe (2) de l'article 6 du Bill
est adopté

At 5.43 p.m. the Committee adjourned
to the call of the Chair.

A 5 h. 43 de l'après-midi, le Comité
s'ajourne jusqu'à nouvelle convocation du
président.

Le secrétaire du Comité,

R. V. Virr,

Clerk of the Committee.

[Texte]

EVIDENCE

(Recorded by Electronic Apparatus)

Thursday, March 6, 1969.

● 0938

The Chairman: Gentlemen, I see a quorum.

We are on Clause 7—Exception re acts in private between husband and wife or consenting adults. Mr. Valade was speaking.

Mr. Woolliams: I was wondering before we do that if I might raise this matter as a point of order. I did speak to Mr. Valade and I think he will excuse me for butting in at this stage. We are moving along and I think we can move along very quickly on this Bill, but I am going to make one request. We appreciate the fact that if we call witnesses on every section that it would take a long time to go through the Bill. However, I have made a request—I was not at the steering committee yesterday but two of the members from my party were there—and we would like to call Professor Mewett who is a Professor at Toronto University not only on this section but particularly on the section of abortion. I would like to get the feeling of the Committee and I trust that I will get the co-operation.

I am not suggesting, Mr. Chairman, for one moment that we call witnesses on all these sections because it is a big Bill and we have a lot to do. If the Committee would co-operate with me in that regard and agree that we could call Professor Mewett, as far as I am concerned that is the only request that I have for any witnesses in reference to this Bill.

I say this with the greatest respect: we are getting the viewpoints of the Department. Surely the Minister, and I say this through you, would agree that to have some legal opinions from outside the Department would be healthy, would be the kind of democracy that has been suggested by members of the Cabinet and, I believe, by members of the Opposition.

I do not want to make a long speech on this. I would like to get the feeling of the Committee. Surely, I do not have to move a formal motion to bring a witness. I have made the suggestion to you, Mr. Chairman. I have the impression that there seems to be

[Interprétation]

TÉMOIGNAGES

(Enregistrement électronique)

Le jeudi 6 mars 1969

Le président: Messieurs, je vois que nous avons quorum.

Nous en sommes à l'article 7: Exceptions concernant les actes de la vie privée entre conjoints ou entre adultes consentants. M. Valade a la parole.

M. Woolliams: Je me demandais ici s'il n'y avait pas un rappel au règlement. J'en ai parlé à M. Valade et je crois qu'il m'excusera d'intervenir à ce stage. Nous procédons assez rapidement au nom de ce bill, mais je ferais une demande. Bien sûr, nous nous rendons compte que si l'on appelle des témoins sur chaque section cela prendra beaucoup de temps. J'ai fait une demande, je n'étais pas membre du Comité de direction mais deux des membres de mon parti étaient là et nous aimerions demander au professeur Mewett de l'Université de Toronto non seulement pour cet article et surtout pour la section sur l'avortement. J'aimerais avoir l'impression du Comité.

Je ne suggérerais pas, monsieur le président, pour un instant, que l'on appelle les témoins sur toutes ces sections, parce que c'est un bill très long et que nous avons beaucoup à faire. Mais, si le Comité voulait coopérer avec moi et était d'accord pour que l'on demande au professeur Mewett de témoigner, c'est la seule demande que j'ai en ce qui concerne les témoins.

Avec le plus grand respect, nous avons le point de vue du ministère. Bien sûr, le ministre sera d'accord comme quoi il serait une bonne chose d'avoir des opinions juridiques en dehors du ministère. Ce serait le genre de démocratie, ce que les membres du Cabinet de l'opposition apprécient.

Je ne voudrais pas faire un discours très long là-dessus. J'aimerais simplement avoir l'avis du Comité en la matière. C'est une suggestion que je vous fais. Il semble y avoir un certain malentendu quant à ce que j'ai envie de faire et nous pensons qu'avant d'aborder

[Text]

some misunderstanding of what I want to do, but we feel that before we start having a discussion on a section like abortion, and even on this section of homosexuality, on which Professor Mewett has had something to say in the legal journals, that it would be healthy to have his opinion.

● 0940

Now the Committee or I might not agree with him. The Minister may not agree with him; the Department might not. But at least we would be getting the kind of evidence before the Committee that I think is healthy so that we can come up with a decision based on evidence on both sides of the fence. Otherwise, it would look as if all we are here for is to examine the Department, trying to find out what the legal interpretations of these sections are and their effect on the Code.

Without saying any more at this stage, I reserve the right to speak again if there is any objection to my calling Professor Mewett at a date convenient to the Committee, convenient to you, and convenient to the Minister.

Mr. MacGuigan: Mr. Chairman, Professor Mewett and I are both very good friends and former colleagues and I do think very highly of his ability in this area but he is only one of a number of criminal law professors across the country of considerable eminence. Personally, as a former teacher of criminal law, I would feel embarrassed at singling out one of these men for special treatment by our Committee. In this case we have the advantage of having his written comments and perhaps there is even less need to hear him than there is to hear others who have not made any written comments.

Mr. Woolliams: In answer to that, Mr. Chairman, I have been in touch with him and asked him if he would come. I am asking this on behalf of my own group. We are the official Opposition and we have a responsibility the same as every other member of Parliament sitting on the Committee, but we have probably a special responsibility in that as an Opposition our job is to suggest constructive changes; our job is also to oppose those things which we might think are wrong.

I have sat on both sides of the House and that kind of philosophy does not generally come from government members. I am not saying there are not some government members who do not take a strong position; they have them in your party and we had them in ours when we were the government. I certainly go along with all other Opposition par-

[Interpretation]

une discussion sur la section sur l'avortement et même sur l'homosexualité sur laquelle le professeur Mewett a eu quelque chose à dire dans les journaux juridiques.

Maintenant, le Comité ne sera pas d'accord.

Le ministre n'est peut-être pas d'accord. Le ministre n'est, peut-être pas d'accord; et même le ministère. Mais, au moins, on aurait le genre de témoignage devant le Comité qui permettrait aux gens de prendre une décision fondée sur des témoignages des deux côtés du problème. Il n'y a pas seulement la question de l'interprétation des lois au sein du ministère.

Je me réserve le droit de reparler, s'il y a des objections à la convocation du professeur Mewett. C'est tout ce que j'ai à dire pour l'instant.

M. MacGuigan: Monsieur le président, le professeur Mewett est un ami, un ancien collègue. Je l'estime beaucoup en ce qui concerne ses capacités dans le domaine, mais il est simplement un des nombreux professeurs éminents du Droit criminel. Personnellement, à titre d'ancien professeur de droit criminel, je serais très gêné si l'on devait choisir un de ces hommes et lui donner un traitement spécial. Je crois que nous avons l'avantage d'avoir ses commentaires par écrit.

M. Woolliams: En réponse, monsieur le président, je l'ai contacté et je lui ai demandé s'il voulait venir. Je demande ceci au nom de mon propre groupe. Nous sommes l'opposition officielle et nous avons la même responsabilité que tout autre membre du Comité, mais nous avons sans doute une responsabilité spéciale, car, en tant que membres de l'opposition, nous avons pour tâche de proposer des changements constructifs et de nous opposer aux choses que nous considérons comme mauvaises.

J'ai siégé des deux côtés de la Chambre, et ce genre d'attitude ne vient généralement pas des membres du gouvernement. Cela ne veut pas dire qu'il n'y a pas de membres du gouvernement qui prennent une position ferme: il y en a dans votre parti, et nous en avons dans le nôtre lorsque nous étions au pouvoir. Je m'associe, assurément, à tous les autres

[Texte]

ties; they, too have the same function, and they may wish to have someone they would particularly like to call. If we were delaying proceedings or doing it from the point of view of just putting in time, I would understand any opposition to it, but, with respect, I am at a loss to understand why the Liberal members of this Committee would oppose a suggestion from our group asking for one witness in reference to the interpretation, as we see it, of one of the sections. There may be other professors who could be called. I am certainly going to go along with any member of the Committee who has some particular thing he wants brought out through some legal mind, some legal professor, or some top lawyer in the field.

We, as members of Parliament, are elected on a broad scope. We are not the experts. We do not have the staff of the Department of Justice behind us, as has the Minister. We have to rely on perhaps one secretary and our own knowledge and experience. Many of us have had some experience in this.

I have been very impressed with some of the members of the Liberal Party in matters they brought out: Mr. Hogarth brought out a very important point on jurisdiction at the last Committee meeting. However, if we did not have men of his experience, that particular point and interpretation he brought out would have been lost to us. I do not feel I have that skill; I would like to have a witness.

Mr. Hogarth: Mr. Chairman, could you tell us what evidence Mr. Mewett might specifically give? It seems to me that if he wants to offer you opinions with regard to the bill, surely he can voice his opinion through yourself or anyone of your members without the necessity of taking the time to have him here. I would not for a moment suggest that he would not have opinions to give. Other lawyers in the country have given some very cogent opinions on this bill, too. It appears to me that those opinions can be voiced here through the members. You can say that it is Professor's Mewett's opinion, and so forth; I would not question that for a moment and it would save a lot of time.

Mr. Woolliams: Right now we are taking some time. I appreciate your suggestions. I have some ideas on the abortion interpretation, myself. I am not so sure that my idea is proper. After all, law is not an exact science.

[Interprétation]

partis d'opposition; ils ont le même rôle que nous, et il peut très bien y avoir quelqu'un qu'ils tiennent tout particulièrement à faire venir ici pour témoigner. Si nous essayions simplement de retarder les délibérations ou de tuer le temps, je comprendrais que l'on s'y oppose, mais, sauf le respect, je ne vois vraiment pas pourquoi les députés libéraux du Comité s'opposeraient à la proposition faite par notre groupe de faire venir un témoin au sujet de l'interprétation, telle que nous la comprenons, de l'un des articles. On pourrait peut-être faire venir d'autres professeurs. Je m'associerai certainement à tout membre du Comité qui souhaitera faire éclaircir une certaine question par un expert juridique, par un professeur de droit, ou par un avocat spécialiste en la matière.

En tant que députés, nous ne sommes pas des experts; nous sommes élus selon des données plus vastes. A la différence du Ministre, nous n'avons pas le personnel du ministère de la Justice pour nous conseiller, et nous devons compter sur une secrétaire et sur nos propres connaissances et notre propre expérience. Beaucoup d'entre nous avons une certaine expérience dans ce domaine.

Certains membres du parti libéral m'ont beaucoup impressionné par les questions qu'ils ont soulevées: M. Hogarth a signalé un point de juridiction très important lors de la dernière séance du Comité. Si nous n'avions pas eu un homme de son expérience, nous aurions laissé passer ce point et l'interprétation qu'il y a donnée. Je ne me sens pas assez de compétence moi-même, et j'aimerais donc faire venir un témoin.

M. Hogarth: Monsieur le président, pourriez-vous nous dire quel genre de témoignage pourrait donner M. Mewett? Il me semble que s'il veut vous donner son avis au sujet du Bill, il peut le faire par votre intermédiaire ou par celui de n'importe quel membre du Comité, sans que nous ayons à prendre le temps de le faire venir ici. Je ne veux absolument pas dire par là qu'il n'a pas d'avis à donner. D'autres avocats du pays ont aussi exprimé des opinions très valables sur ce Bill. Il me semble que ces opinions peuvent s'exprimer ici par l'intermédiaire des députés. On peut préciser qu'il s'agit de l'opinion du professeur Mewett, et ainsi de suite; je ne mettrais jamais la chose en question, et cela nous ferait gagner beaucoup de temps.

M. Woolliams: Nos discussions actuelles prennent pas mal de temps, elles aussi. Je comprends vos propositions. J'ai aussi, pour ma part, mon idée sur l'interprétation à donner à l'avortement. Je ne suis pas certain que

[Text]

We are spending time now arguing on a matter of procedure while we could be studying the bill. If you are talking about time, and if that is the real argument why we cannot have Professor Mewett here, then it certainly is going to save time by bringing him, because he is going to be able to put succinctly his interpretation in answer to questions from me and from other members of the Committee.

• 0945

M. Ouellet: Merci, monsieur le président, le député vient de dire très exactement que nous perdons du temps à discuter de procédure. J'ai assisté hier à la réunion du comité directeur et nous avons discuté abondamment de la possibilité de faire venir ce professeur au Comité. Après discussion, les représentants de son parti étaient d'accord, il me semble, que la meilleure façon de procéder serait de demander à ce professeur, par l'entremise d'un membre de notre Comité, de présenter ses suggestions et ses interprétations du projet de loi. Or on a soulevé que si ce professeur était invité à donner une interprétation d'un article ou d'articles du projet de loi, il n'y a aucun doute que dans l'esprit de certains membres du Comité, que tous les autres membres de ce Comité devraient pouvoir profiter de ce précédent et appeler d'autres membres du corps professoral ou du Barreau pour venir donner des interprétations d'autres articles du projet de loi ou de l'ensemble du projet de loi. De sorte que, en acceptant la suggestion du député, nous ouvrons la porte à toute une série de témoins et j'ai peur que nous ne répitions l'expérience du Comité de la santé et du bien-être social et des affaires sociales qui a déjà reçu beaucoup de témoignages d'experts de différents domaines, de différentes disciplines, précisément sur la question de l'avortement.

Je pense que nous avons demandé que soient versés au dossier de notre comité tous les témoignages et tous les procès-verbaux touchant aux différents sujets visés par notre projet de loi et qui ont déjà été étudiées par d'autres comités permanents de la Chambre.

Alors je crois que nous devrions nous en remettre au consensus obtenu hier à la réunion du comité directeur, et si des membres du Comité veulent mettre en évidence certaines opinions, ou interprétations d'experts du domaine du droit ou du corps professoral, ces témoignages pourront nous être donnés par l'entremise de l'un des membres du Comité.

[Interpretation]

mon idée soit bonne. Après tout, le droit n'est pas une science exacte.

Nous sommes en train de discuter de procédure, alors que nous pourrions passer ce temps à étudier le Bill. Si c'est la question du temps qui vous préoccupe, et si c'est là véritablement la raison pour laquelle nous ne pouvons faire venir M. Mewett, son témoignage nous ferait certainement gagner du temps, car il pourrait nous donner de façon succincte son interprétation de la chose, en réponse à mes questions et à celles des autres membres du Comité.

Mr. Ouellet: Thank you, Mr. Chairman, the member has just said, and rightly so, that we are wasting time by discussing procedural matters. Yesterday I participated in the Steering Committee meeting and we discussed at length the possibility of calling this professor to testify here. After our discussion, the representatives of his party were agreed, it seemed, to me at least, that the best way to proceed would be to ask the professor, through a member of our Committee, to present his suggestions and his interpretation of the bill. The point was raised that if this professor should be called to give an interpretation on one clause or on several clauses of the bill, there is no doubt whatsoever that, in the mind of certain members of the Committee, any member of the Committee should be able to take advantage of this precedent and call other witnesses from the teaching body or from the Bar, to come here and give their interpretation of other clauses of the bill or perhaps the bill as a whole. So that by accepting the suggestion made by the hon. member, we are opening the door to a whole series of witnesses and I am afraid that we will repeat what is happening in the Committee on Health, Welfare and Social Affairs where many witnesses have come to testify from the various fields or disciplines on questions of abortion in particular. We would be repeating all that.

I think we have asked that all the evidence and all the proceedings relating to the various subjects of our bill and which have already been studied by other Standing Committees of the House of Commons be put on the record.

Therefore, I believe we should stick to the consensus obtained yesterday at the Steering Committee meeting and if members of the Committee want to bring up certain opinions or interpretations from legal experts, or from the teaching body, such evidence can be given through one of the members of the Committee.

[Texte]

The Chairman: Gentlemen, I think we have had reasonable discussion on this matter. I feel that it is perhaps the most important point that will come before the Committee; that is, to question the witnesses.

I would suggest at this time that the steering committee again have a look at this matter. We can canvass various alternatives and possibilities and then a final decision will have to be made. Is that agreeable?

Mr. Woolliams: Mr. Chairman, I would say this, and I mean this, that you are an excellent chairman; and you are trying to be very fair. However, I might as well lay it on the table right this moment, I want to hear from the Minister; he is here and he knows the cooperation he has received from our group as far as this bill is concerned. I am not going to go any further than that. Confidences are confidences. It does seem to me that it is just another delaying tactic so that I, or any other member of this Committee will not have the privilege of bringing out the facts to the Canadian people, the interpretation of the law, because there are members around this table supporting certain parts of this bill which they know are not palatable at home, or in the constituency, or across the country. Some of us have taken that position. I am one

• 0950

who supported this bill in Second Reading, not as a matter of principle, but voted for the bill so that we would have the right—and I am beginning to regret the position I took—to have this bill studied. I have never been frightened of knowledge. None of us can claim we have all the knowledge of these matters, particularly in law. Those lawyers who are present, and there are some very good ones here, know that law is not a very exact science; that, on interpretation, that is why we have so many decisions on various matters, and even courts distinguish their various judgment and come down on one side and on the other side.

I think, Mr. Chairman, all I am getting here this morning, with the greatest respect to all the members of the Committee, without imputing any motives, are delaying tactics so that I am not going to be able to call witnesses.

If that is the kind of Committee we have under the new rules, then I do not know why I am even sitting here with my friends asking nice little questions of the Department of Justice and the Minister, getting their opinion, getting one side of the fence. It is like the Crown's being able to present its

[Interprétation]

Le président: Messieurs, je crois que nous avons eu une discussion raisonnable sur ce sujet. Je crois que c'est probablement la question la plus importante en ce qui concerne la procédure, à savoir, l'interrogatoire des témoins.

Je suggère, à ce stade, que le comité directeur réexamine la question. Nous pourrions énumérer les différentes possibilités et une décision définitive sera prise. Êtes-vous d'accord?

M. Woolliams: Je voudrais dire ceci, monsieur le président. Vous êtes un très bon président et vous êtes très juste. Mais, aussi bien le dire tout de suite, j'aimerais entendre l'opinion du ministre à ce sujet. Il est ici et il sait quelle coopération il a reçue de notre groupe en ce qui concerne ce Bill. C'est tout ce que je veux dire à ce sujet. Les confidences sont des confidences. Mais il me semble que c'est une tactique dilatoire qui fait que moi et d'autres membres du comité ne pourront pas présenter les faits à la population du Canada, l'interprétation de la Loi, parce qu'il y a des députés autour de cette table qui appuient des parties du Bill qui ne sont pas acceptables pour les gens de leur circonscription ou de tout le pays. Certains ont pris cette attitude. Moi, j'ai appuyé ce Bill en deuxième lecture, pas par principe, mais j'ai voté pour le Bill

afin qu'on ait le droit de le discuter. Je commence à le regretter. Personne ne peut connaître toutes ces questions, surtout en ce qui concerne les aspects juridiques. Les avocats ici présents, et il y en a plusieurs, savent que le droit n'est pas une science exacte et c'est pour cela que, par l'interprétation, nous avons tant de décisions sur diverses questions, parfois même, des décisions contraires sont prises.

Tout ce que j'obtiens ce matin, monsieur le président, en toute déférence pour les membres du Comité sans imputer de motivations à personne, ce sont des tactiques qui nous empêcheront de faire venir des témoins.

Alors si c'est cela le nouveau règlement, pourquoi est-ce qu'on vient ici s'asseoir autour de cette table pour poser des questions gentilles au ministre et à son ministère et avoir leur avis, leur côté de la médaille. Il s'agit de la même chose que si la Couronne pouvait avancer sa cause sans permettre à la

[Text]

case without the defence having the privilege of calling any witnesses. Now, I do not know of any court in the land that would call that justice and I do not think this is the kind of participation in democracy that the Prime Minister and Mr. Blair, who was head of the Committee on the new rules, had in mind when they talked about participation in democracy.

It seems to me this is the closed shop; this is closure with the axe right now in this Committee. We have taken this right to deal with these matters clause by clause out of the House of Commons and sure, they said the committees would be a fair, just place where we would get a fair, just hearing so the knowledge could be laid down. I know right now—because you are a man of such great courtesey and dignity, Mr. Chairman—that behind the scenes there is opposition to my calling this witness.

Some members of this Committee seem to be concerned with what kind of evidence he is going to give. What professor or what lawyer, sir, is going to come to this Committee knowing that they are opposed to his giving evidence? What freedom is that?

Mr. MacEwan: Mr. Chairman, I want to...

The Chairman: Order please, Mr. MacEwan?

Mr. MacEwan: I just want to endorse what Mr. Woolliams has said, Mr. Chairman. I have sat in the Justice Committee for a few years and I have always enjoyed it, but I want to suggest, as pointed out by my colleague, that this is not just a matter of going into departmental estimates; this is a very, very important Bill which has a lot of ramifications and means a lot in every household in this country.

I am not suggesting we should go on for weeks and weeks and call in any number of witnesses. I voted for this Bill on Second Reading and I suggested when I spoke in the House of Commons that it was necessary for us to go into this Bill very, very carefully in this Committee, and I hope we can do that. Mr. MacGuigan has stated he knows this professor, we are glad to have him with us on our Committee, but I think there are other professors that we would like to hear from, especially the one mentioned by Mr. Woolliams.

That is all I have to say. I do not suggest for one minute that we should go on, and on, and on. I can think of one other clause on which perhaps a witness should be called. As I understood the evidence of the Committee

[Interpretation]

défense d'appeler des témoins. Je ne sais pas s'il y a tribunal au pays qui appellerait cela de la justice, et je ne crois pas que c'est le genre de participation en démocratie que le premier ministre et M. Blair, qui était président du Comité sur le nouveau règlement, avaient à l'esprit lorsqu'ils ont parlé de participation en démocratie.

Ceci me semble être un atelier fermé; c'est la clôture à la hache dans notre Comité. Nous avons décidé de discuter de ceci article par article hors de la Chambre des Communes, et ils nous ont dit que les comités seraient justes, qu'ils écouterait tous les avis. Je sais maintenant, parce que vous êtes un homme courtois et digne, monsieur le président, que, derrière la scène, il y a de l'opposition à ce que je fasse venir cette personne. Certains membres du Comité semblent être préoccupés par les témoignages qui seront donnés. Quelle est cette liberté si on empêche les gens de venir exprimer leur avis? Où est la liberté?

M. MacEwan: Monsieur le président...

Le président: A l'ordre. Monsieur MacEwan?

M. MacEwan: J'appuie ce qu'a dit M. Woolliams, monsieur le président. J'ai participé au Comité de la Justice durant plusieurs années et j'ai toujours bien aimé cela mais, comme l'a dit mon collègue, il ne s'agit pas simplement d'étudier des prévisions budgétaires d'un ministère; il s'agit d'un bill très important, qui a beaucoup de ramifications et qui représente beaucoup pour toutes les familles dans ce pays.

Je ne dis pas que nous allons siéger pendant des semaines et des semaines, et que nous soyons obligés d'appeler toutes sortes de témoins, mais je crois qu'il faudrait faire appel à certains témoins. J'ai voté pour ce bill en deuxième lecture et j'ai dit, lorsque j'ai pris la parole en Chambre des communes, qu'il sera nécessaire d'étudier ce bill avec beaucoup de soin au sein du Comité, et j'espère que nous pourrons le faire. M. MacGuigan a dit qu'il connaît ce professeur, et je crois qu'il y a d'autres professeurs que nous aimerions entendre, surtout celui mentionné par M. Woolliams.

C'est tout ce que j'ai à dire. Je ne veux pas suggérer pour un instant que nous devrions continuer éternellement, mais je pense aussi à un autre article sur lequel il faudrait faire témoigner quelqu'un, en ce qui concerne l'i-

[Texte]

on which you sat, Mr. Chairman, regarding the breathalyzer test this will be made part of our study and I think that is a good idea. I do suggest that consideration should be given again by the steering committee to calling at least some witnesses before this Committee. Thank you.

The Chairman: Mr. Hogarth?

Mr. Hogarth: Mr. Chairman, I am surprised that my friends would propose the calling of a witness without giving us a complete resumé, at least in draft form, of what that witness might advise us. I do not think under any circumstances we should call witnesses without first having a minute of the evidence they might give. I have before me a document that was prepared by the city prosecutor for Vancouver, Mr. McMorran, one of her Majesty's counsel, who to my mind is one of the foremost criminal lawyers in Canada. It is 20 pages long and it is a criticism of this Bill.

Now, it appears to me that if we are going to call Professor Mewett we should certainly call Mr. McMorran too. And if we get into that realm, there are countless documents that we all have that have been prepared with care and with concern by lawyers and other persons throughout this whole country, so those persons should be called too. Therefore, I cannot see why we should select one witness over any other. If we take them all we are not going to finish this Bill. It appears to me that if my friends want to get advice, if they want to get opinions, they have been given a substantial allotment for research—which we have not been given, by the way—and they can certainly use some of that to get these opinions prepared that they need.

• 0955

The Chairman: Mr. Rondeau?

M. Rondeau: Monsieur le président, je n'ai pas eu à prendre de décision au sein du comité directeur, et, si celui-ci doit se réunir de nouveau, j'aimerais avant tout être invité.

Premièrement, tout le monde sait qu'à la Chambre des communes, on ne peut pas assigner des témoins. En comité, ce n'est pas que je sois d'accord pour inviter plusieurs témoins et pour avoir les opinions de tous ceux qui sont en faveur et de tous ceux qui sont contre; mais on devrait au moins pouvoir inviter un certain nombre de témoins, des autorités reconnues par le public, qu'elles soient pour ou contre. Ainsi, après la modification ou l'adoption du Bill, le public saura qu'on n'a pas seulement tenu compte des dépositions écrites. C'est plus ou moins plaisant, pour un témoin, qui a été convoqué, de lui demander

[Interprétation]

vressomètre; je crois qu'il faudrait aussi appeler un témoin. Le Comité de direction devrait encore réexaminer la question de convoquer quelques témoins à ce Comité. Merci.

Le président: Monsieur Hogarth?

M. Hogarth: Monsieur le président, je suis surpris que mes amis proposent le témoignage d'une personne, sans avoir un résumé de ce qu'elle peut dire. Je crois qu'il ne faut pas appeler un témoin sans que l'on ait connaissance de ce qu'il a à dire. J'ai ici un texte de M. McMorran, procureur de la Couronne à Vancouver, qui, à mon avis, est un des criminologues les meilleurs du Canada et qui critique ce projet de loi, en 20 pages.

Si nous devons appeler le professeur Mewett, nous devrons aussi appeler M. McMorran. Et il y a toutes sortes de documents que nous avons étudiés, qui ont été préparés avec soin, par des avocats, des juristes, à travers le pays, et on devrait faire venir ces personnes aussi. Donc, je ne vois pas pourquoi on devrait choisir un témoin parmi d'autres. Et, si nous prenons tous les témoins, nous n'en finirons jamais. Si mes amis veulent des conseils, des opinions, je pense qu'on leur a donné une allocation importante pour la recherche, ce que nous n'avons pas reçu, et on peut préparer ces opinions.

Le président: Monsieur Rondeau?

Mr. Rondeau: Mr. Chairman, I was not called upon to take any decision in the Steering Committee, and if it is going to meet again I should like to be invited in the first place.

First of all, everyone is aware that in the House of Commons you cannot call witnesses. But in the Committees—it is not that I agree to invite a large number of witnesses and have the opinions of all those who are in favour and all those who are not—we should at least be able to invite a certain number of witnesses who are recognized amongst the public as authorities in their field, whether they be for or against the bill under consideration. Hence, after the bill has been amended or accepted, the public will know that it was not only written statements that were taken

[Text]

de faire une déposition écrite sans l'inviter à venir l'exposer lui-même.

C'est pourquoi j'appuie ce que l'honorable député de Calgary-Nord a dit tantôt au sujet de l'opinion du public, information dont les députés ont besoin. Si nous limitons les témoins à des dépositions écrites seulement, cela veut dire que nous n'aurons pas toutes les informations requises, parce que, en pratique, les membres du Comité n'auront certainement pas le temps d'étudier sérieusement les dépositions écrites qui pourraient être faites par différents témoins.

Pour ces raisons, puisque nous ne pouvons pas assigner des témoins à la Chambre, nous devrions, en comité, pouvoir assigner des témoins qui sont en faveur et des témoins qui sont contre. Nous devrions pouvoir assigner un témoin reconnu pour son opposition au Bill ou un témoin reconnu pour son adhésion au Bill pourvu que ce soit un témoin reconnu comme étant une autorité. De cette façon, premièrement, les députés pourront avoir toutes les informations requises et, deuxièmement, le public saura qu'avant d'avoir pris une décision sur ce Bill, nous avons donné la possibilité à toutes les autorités, qu'elles soient en faveur ou contre, de faire valoir leur point de vue au Comité. En d'autres mots, il faudrait permettre à des autorités de l'extérieur de la Chambre, qui pourraient être convoqués comme témoins, de pouvoir participer d'une façon ou d'une autre à l'étude de ce Bill.

Ainsi, ce pourrait être un précédent si nous commençons à limiter les témoins pour la simple raison qu'ils pourraient être hostiles au Bill. Si nous commençons à limiter les témoins dans certains comités, ceux-ci, éventuellement, ne seront plus utiles et nous ne pourrions pas étudier en détail toutes les modalités de notre législation.

Mr. Blair: Mr. Chairman, I was given a rather unexpected distinction this morning by having my name mentioned in support of Mr. Woolliams' proposition. I think we should approach this question of the calling of witnesses with some deliberation—not with the idea that we are stalling important decisions, but I think we should be well aware of the consequences of the decisions we may make.

Now, this is really only the second meeting of this Committee dealing with the substance of this Bill, and I am no surprised that we have not come to a final decision about how we are going to handle witnesses.

[Interpretation]

into account. It is more or less pleasant, for a witness who has been summoned, to ask him to submit a written brief without inviting him to explain it himself.

That is why I support what the honourable member for Calgary North said a while ago regarding public opinion and information which is necessary for members. If we limit witnesses to submitting to written evidence only, that means that we will not have all the information required, because from the practical point of view, the members of the Committee will certainly not have the time to study seriously all the written evidence which might be submitted by different witnesses.

For these reasons, and since we cannot summon witnesses to the House of Commons, we should be able to hear witnesses in committee who are in favour of and who are against the bill. We should be able to call a witness who is known for his opposition to the bill or a witness who is known to support the bill, providing this is a person who is an authority in his own field. Thus, in the first place, the members will be able to obtain all the required information and, secondly, the public will know that before taking a decision regarding this bill, we have given all authorities an opportunity to express their points of view whether in favour or opposed to the bill, before the Committee. In other words, we should allow authorities from outside of the House, who could be summoned as witnesses, to participate in one manner or another in the study of this bill.

Thus it would be a precedent if we start limiting the number of witnesses for the simple reason that they might be against the bill. If we start to limit witnesses in certain Committees, the latter will eventually cease being useful and we shall not be able to study in detail the various aspects of our legislation.

M. Blair: Monsieur le président, je me suis vu décerner une distinction inusitée au sujet de la proposition de M. Woolliams. Je pense que nous devrions considérer la question des témoins avec circonspection, non pas dans le but de retarder les décisions importantes, mais nous devons connaître toutes les conséquences des décisions que nous pourrions prendre.

C'est seulement la deuxième réunion du Comité sur la substance du bill et je ne suis guère étonné que nous n'ayons pu prendre une décision finale sur la façon de procéder.

[Texte]

Mr. Woolliams: It sounds like Mackenzie King.

The Chairman: Order!

Mr. Blair: Now, Mr. Woolliams, I will deal with you in a minute. I think we have to realize that there are at least two types of witnesses that are going to be proposed for this Committee. One is the type of witness that Mr. Woolliams has proposed, a very learned legal professor who apparently has views on the drafting and the interpretation of the language used in the Bill. The other is the type of witnesses that has been referred to by Mr. Rondeau, and this is the witness concerned with the substance of the Bill. He is either for or against certain things that are proposed in this legislation.

Now, I suggest that there are a variety of decisions we have to make. First of all, can we call on type of witnesses and not the other? Can we say that we will listen only to learned lawyers lecturing to us about the meaning of words, but will not listen to members of the public who have strong views on the substance of the legislation? That is an important decision.

I suggest that if we start to admit evidence on the substance of the legislation nobody in this room can say that one person is entitled to come and another is not; no one in this room can say that if Mr. "A" comes to propose one point of view then, because we are supposed to be superior beings, we can choose Mr. "B" to present a contrary argument.

This is a democratic society. Either we hear people, or we do not. If we get into this kind of thing then I think another type of decision to be made is: what are we trying to do in this Committee? How long will it take? Is it really going to be productive?

Once I was a teacher in a law school. I have a great respect for the academic profession—and I say this with due regard to my friend, Mr. McGuigan—but I think we all know that in the legal profession there is apt to be a wide divergence of opinion about the meaning of any series of written words. The fact that a professor of law chooses to say that the drafting is imperfect does not convince me very much. I think it is just a question of one man's view against another.

I am saying nothing about the gentleman in question. I am merely suggesting that we should not come to an immediate decision to call a law professor without thinking of the wider consequences.

[Interprétation]

M. Woolliams: Ceci ressemble à du MacKenzie King.

Le président: A l'ordre!

M. Blair: Monsieur Woolliams, je vous répondrai dans quelques minutes. Il faut nous rendre compte qu'il y a deux genres de témoins qui viendront comparaître devant le Comité: les premiers sont du type proposé par M. Woolliams, un professeur très savant qui a des idées sur la préparation du bill et la rédaction, la terminologie et, le deuxième type de témoins, c'est le type mentionné par M. Rondeau, le témoin qui s'intéresse à la substance du bill, qui est pour ou contre le bill, qui est d'accord ou non avec les propositions contenues dans cette mesure législative.

Je m'intéresse au genre de décisions à prendre. D'abord, pouvons-nous faire comparaître un type de témoins et non l'autre? Est-ce que nous allons entendre des avocats savants nous parler de terminologie et ne pas entendre les personnes qui ont des idées arrêtées sur la mesure juridique. C'est une décision importante.

Je pense que si nous admettons des témoignages sur la substance du bill, personne ne pourra dire qu'une telle personne est admissible et non pas telle autre. Personne dans cette salle ne pourrait venir nous dire que si monsieur X expose une opinion, nous pouvons trouver monsieur Y qui dira le contraire.

Nous vivons dans une société démocratique. Allons-nous entendre des témoins, oui ou non? Et si nous procédons de cette façon, la deuxième décision à prendre, c'est de savoir à quoi nous visons dans ce Comité. Si nos discussions seront fructueuses ou non et combien de temps il faudra.

J'ai déjà été professeur dans une école de droit, et j'ai beaucoup de respect pour la profession académique, en toute déférence envers M. MacGuigan, mais nous savons tous que dans la profession juridique, il y a de grandes divergences d'opinions sur le sens des mots. Le fait qu'un professeur de droit vient nous dire que la terminologie est imparfaite ne m'impressionne pas. C'est simplement l'opinion d'une personne contre celle d'une autre.

Je n'ai rien contre la personne en cause. Je pense que nous ne devons pas prendre de décision maintenant, de faire venir un professeur de droit sans songer aux conséquences à long terme.

[Text]

I wish to address myself to what Mr. Woolliams has said. It will make it very difficult for this type of decision to be made rationally and sensibly if, every time we mount the rostrum, we have to hear this old record replayed—that one party is here supposedly as the exponent of democracy, liberty and freedom and we, on this side, castigated as being opposed to a proper investigation of this or any other legislation.

We do have an important role to play in committees of this type, but we are not going to get down to it, we are not going to make sensible decisions on procedure, if this kind of procedural discussion always incorporates this high political content.

My feeling is that the steering committee could provide a real service to us by taking into account the various types of witnesses we might hear, the types of evidence which might be helpful, and the possibilities of calling some and not others. For that reason, I am of the opinion that we should not dispose of this matter finally, but should ask our steering committee to go back and re-examine it.

The Chairman: Gentlemen, I think we have had...

Mr. Valade: I think this is an important point, Mr. Chairman.

The Chairman: There are many important points, but we have been here for half an hour. I will hear you, Mr. Valade, and later, Mr. McCleave.

Mr. Valade: I think the suggestion made is quite in line with Mr. Woolliams; but the fact of the matter is still that if, in studying a clause—and actually we are studying proposed section 149A—there are certain legal opinions or witnesses to be heard on it, what is the use of going into a detailed study of this clause before we hear these witnesses? I think this has to be given very serious consideration.

Certainly it is of no use to this Committee to hear a witness after the clause has been accepted by it.

On the point raised previously, about the expediency of this Committee, I would refer the members to Article 119 of Beauchesne's Parliamentary Rules and Forms. I will read

[Interpretation]

Et maintenant, sur ce qu'a dit M. Woolliams, il serait très difficile de prendre ce genre de décision de façon rationnelle et logique si, chaque fois que nous montons sur la tribune, nous devons entendre cette vieille rengaine, à savoir qu'un parti est ici pour défendre la démocratie et la liberté et que notre parti se fera critiquer comme étant opposé à l'étude appropriée de cette mesure ou une autre.

Nous avons un rôle important à jouer au Comité, mais nous n'allons pas nous y mettre, nous n'allons pas prendre de décisions logiques au sujet de la procédure si les discussions sur la procédure contiennent toujours des aspects hautement politiques.

Le Comité directeur pourrait nous rendre un véritable service en tenant compte des différentes catégories de témoins que l'on pourrait entendre, du genre de témoignages qui pourraient être utiles, la possibilité d'appeler les uns et non pas les autres. C'est pourquoi je pense que nous ne devons pas prendre une décision finale à ce sujet mais demander au Comité directeur d'étudier la question de nouveau.

Le président: Messieurs, je crois que nous avons...

M. Valade: Je crois que c'est une question importante, monsieur le président.

Le président: Il y a beaucoup de points importants, mais nous sommes déjà là depuis une demi-heure. Et ensuite M. McCleave.

M. Valade: Je crois que la proposition qui a été faite suit celle de M. Woolliams. Mais il demeure que si nous étudions un article, et de fait nous étudions l'article 149a, et si quelques témoins pourraient venir nous donner des opinions juridiques, à quoi bon commencer l'étude détaillée de cet article avant d'entendre ces témoins? Je pense qu'il faudrait songer à cela très sérieusement.

Il est inutile que le Comité entende un témoin après que l'article a été adopté par le Comité.

En ce qui concerne le point soulevé auparavant au sujet de la rapidité du travail du Comité, je voudrais vous référer au règlement 119 de Beauchesne, dont je vous lirai

simplement la première phrase des alinéas 1 et 2.

(1) L'une des principales fonctions de la Chambre consiste à discuter des questions

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just the first sentences of paragraph (1) and paragraph (2). Paragraph (1) reads as follows:

(1) One of the main functions of the House consists in debating public issues,

[Texte]

a function which can only be filled by complete freedom of speech.

In the second paragraph, the first line reads as follows:

(2) The mere object of shortening sessions may lead to an undue curtailment of the freedom of speech.

These are rules that have been set down, and as they apply in the House so also do they apply to Committee work.

Mr. Chairman, I think you have a very difficult decision to take, but certainly we cannot proceed in this Committee, with full knowledge of subject matters and legal aspects, before we hear witnesses qualified to discuss these issues.

The Chairman: Mr. McCleave?

Mr. McCleave: Mr. Chairman, I think we can proceed from two basic assumptions first, that we do not intend to be here forever, and, second, that, no matter what some members have argued, we do not open the door to everyone who may wish to come before us and venture an opinion.

In addition to the two classes that Mr. Blair has mentioned, I think there is a third important class involved here, and that is the level at which justice is administered. I am thinking particularly of the magistrates' courts on which I think we do throw quite an extra burden. Speaking for myself, had I any one witness that I wanted to bring before the Committee I would like to have a magistrate, to tell us whether these provisions are practical, and whether a great deal more money is going to be needed to carry them out, as I am advised there will be. However, I do not intend to argue that case this morning.

I suggest—and your suggestion, sir, was reasonable—that we allow the steering committee to consider it again, but that surely the members can indicate to the members of that committee what sorts of witnesses they would like to hear.

I can tell Mr. Woolliams of just one person I would like to hear from for a few minutes here. I think in that way we can limit the numbers that we do want to hear.

That would be my recommendation: That the steering committee, when it does study the problem, draw up a list of proposed witnesses, and then we will know whether or not the problem is manageable.

Mr. Woolliams: Mr. Chairman, I know you are trying to cut off discussion, and I do not blame you. You want to get on with the job.

[Interprétation]

publiques, fonction qu'elle ne peut remplir que par une complète liberté de parole.

La première ligne du deuxième alinéa dit:

(2) Le simple souci de raccourcir les sessions peut aboutir à une limitation induite de la liberté de parole.

Ce sont les règlements, et ceux qui s'appliquent à la Chambre devraient s'appliquer aussi au travail du Comité.

Par conséquent, monsieur le président, je pense que vous avez une décision très difficile à prendre, mais nous ne pouvons pas travailler, avec une connaissance complète de tous les aspects juridiques d'un article, avant d'entendre les témoins qui pourraient nous donner les explications.

Le président: M. McCleave.

M. McCleave: Monsieur le président, je crois que nous pouvons nous fonder sur deux hypothèses. Premièrement, nous n'avons pas l'intention de siéger indéfiniment, et deuxièmement, quelle que soit l'opinion des députés, nous n'admettons pas tous les gens qui veulent venir nous exprimer leur opinion.

En plus des deux catégories de témoins mentionnés par M. Blair, il y a une troisième classe de témoins importante, celle où la justice est administrée. Je pense surtout aux tribunaux de première instance qui portent une lourde charge. S'il y avait un témoin à entendre, j'aimerais entendre un magistrat venir nous dire si les dispositions de la Loi sont pratiques, et s'il faudra dépenser beaucoup d'argent pour les appliquer. Mais je ne voudrais commencer un débat à ce sujet ce matin.

Ce que je voudrais suggérer, et votre proposition est raisonnable, c'est que le Comité directeur étudie la question de nouveau, mais les membres pourraient indiquer au Comité le genre de témoins à convoquer.

Il y a une personne que j'aimerais entendre pour quelques minutes. Je crois que nous pourrions limiter, de cette façon, le nombre de témoins que nous voulons entendre. Je recommande que lorsque le Comité de régie étudiera le problème, il dresse une liste de témoins, et nous verrons si le problème est soluble ou non.

M. Woolliams: Je sais, monsieur le président, que vous essayez de restreindre la discussion sur ce point, et je ne vous blâme pas.

[Text]

However, the steering committee met yesterday, and they are going to be left with this decision and we are not able to come to a decision, then I am going to ask that the section on homosexuality stand until there is a decision on whether witnesses, or a witness, can be called.

Mr. Blair talks about not being interested in hearing high political content. Words can do violence to high political content, and I appreciate that; but silence also can do violence to high political content. I know what is behind the whole thing. He knows. He has been on both sides of the fence. He has been in both the Conservative Party and the Liberal Party.

The answer is. . .

Mr. Blair: Wisdom comes later in life to some than to others!

The Chairman: Gentlemen, let us stick to the point.

Mr. Woolliams: Mr. Chairman, I therefore ask that Clause 7 of proposed section 149A stand until the steering committee have come to a decision; and also those sections on abortion. I think those—and perhaps lotteries might be in this too—are the two most contentious matters in this bill—and I would hope that the Minister would agree.

I would like to hear what the Minister has to say. Is the Minister against any witnesses being called before this Committee? Three categories of witnesses have been mentioned, two by Mr. Blair and one by Mr. McCleave. Or does the Minister take the position that he and the Department are just going to railroad this thing through? I would like to hear from him. He has been silent this morning.

Hon. John Turner (Minister of Justice and Attorney General of Canada): I am silent because I am only a witness, Mr. Chairman.

Mr. Woolliams: You are the Minister of Justice.

Mr. Turner (Ottawa-Carleton): I am still a witness before this Committee. If I am invited by the Chairman to say something, I will. You are asking me a question, Mr. Woolliams, and I will reply, but I have not participated in this discussion; and, as I understand the rules, I have no right to participate because I am not a member. However, I do not want

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you to regard my silence as in any way whatsoever consent to your proposition.

[Interpretation]

Vous voulez que le travail du Comité avance. Mais le Comité directeur s'est réuni hier et s'il doit prendre une décision, et il n'a pas pu en prendre, je vais demander que l'on réserve l'article sur l'homosexualité jusqu'à ce qu'il y ait une décision sur le ou les témoins à convoquer.

M. Blair dit qu'il ne veut pas entendre d'opinions politiques. Je concède que les paroles sont parfois néfastes pour la politique, mais le silence peut aussi être très nuisible. Je sais ce qui est derrière toute cette mesure et il le sait également. Il a fait partie du parti conservateur aussi bien que du parti libéral à un moment donné.

La réponse est. . .

M. Blair: Certains n'atteignent la sagesse que très tard dans la vie.

Le président: Messieurs, restons en au sujet.

M. Woolliams: Monsieur le président, je demanderais donc que l'article 7(149a) soit réservé jusqu'à ce que le Comité Directeur ait pris une décision, ainsi que les articles concernant l'avortement. Ce sont les articles, on peut aussi inclure la loterie, les plus controversés du bill et j'espère que le ministre sera d'accord.

J'aimerais savoir ce qu'en pense le ministre. Est-ce que le ministre s'oppose à ce que l'on fasse venir certains témoins? Est-ce qu'il admet qu'il y a trois catégories de témoins, deux mentionnées par M. Blair et une par M. McCleave? Ou est-ce que le ministre, et son ministère, croient que nous allons forcer l'adoption de cette mesure? J'aimerais avoir son opinion.

L'hon. M. Turner (ministre de la Justice et Procureur Général du Canada): Je suis ici seulement en qualité de témoin, monsieur Woolliams.

M. Woolliams: Vous êtes ministre de la Justice.

M. Turner (Ottawa-Carleton): Je suis néanmoins un témoin et si le président m'invite à témoigner, je le ferai. Vous m'avez posé une question à laquelle je répondrai mais je n'ai pas à participer à la discussion parce que je n'ai pas le droit d'y participer, si j'ai bien compris les règlements, parce que je ne suis pas membre du Comité.

J'espère que vous n'avez pas cru que mon silence impliquait mon assentiment à votre proposition.

[Texte]

First of all, now that you have asked me for my view, the consensus, even on all sides of this Committee, seems to have been that the steering committee ought to look at it again.

I could not let one aspect of your opening remarks pass, Mr. Woolliams. This bill is not just a product of the Department of Justice; it is not just a private drafting exercise of the law officers of the Crown. This bill has been public, with its predecessor Bill C-195, for over a year now. The propositions in the bill have been reviewed for a number of years by the attorneys general of all the provinces. It has been reviewed again by the attorneys general of all the provinces and the uniformity commissioners.

We have received briefs and representations, not only from the public, but from lawyers, crown prosecutors, including Stewart McMorran from Vancouver, and professors. We have had representations on two occasions on this bill from The Canadian Bar Association.

Bill C-195, relating to the gross indecency provisions which have not been changed and the abortion section which has not been changed, was before the Standing Committee on Health, Welfare and Social Affairs. Every opportunity was given before that Committee to call not only witnesses from the public but legal experts as well. So, really, I have to resist the implication, one perhaps that you did not want to give, that this was a private exercise of a few lawyers who happen to be law officers of the Crown.

This has received very wide legal comment, very wide legal scrutiny. And a good many suggestions coming from the profession—academic, practicing, bench, magistrates, defence, crown counsel, from right across this country—have been incorporated in the bill to begin with, and have been reflected in changes between Bill C-195 and the current Bill C-150. Having said that, I prefer to leave it to the steering committee.

Mr. Chairman: Gentleman, I would suggest that after this meeting, after 12 o'clock, we have a meeting of the steering committee, and that in the meantime we proceed with Clause 7. I now call Clause 7.

Mr. Valade: Mr. Chairman, I believe I have the floor.

The Chairman: Yes, Mr. Valade.

Mr. Valade: I will just make a few remarks in English. It is the decision of the Committee

[Interprétation]

Tout d'abord, puisque vous me demandez mon opinion, je pense que presque tous les membres du Comité sont d'accord que le Comité directeur étudie la question de nouveau.

Mais il y a un aspect, dans vos remarques d'ouverture, que je ne peux passer sous silence. Ce bill n'est pas simplement le produit du ministère de la Justice. Il ne s'agit pas d'un exercice de rédaction de la part des fonctionnaires de la Couronne. De même que son prédécesseur, le bill C-195, ce bill a été rendu public depuis environ un an. Les propositions qu'il contient ont été étudiées par les procureurs généraux de toutes les provinces pendant quelques années. Il a été de nouveau étudié par toutes les provinces.

Nous avons reçu des mémoires et des communications, non seulement de la part du public, mais aussi de la part d'avocats, de procureurs de la Couronne, y compris M. Stewart, M^e Morran de Vancouver, de la part de professeurs de droit, et en deux occasions, nous avons reçu une communication de la part de la Canadian Bar Association.

Le bill C-195 qui se rapporte à la bestialité et l'article sur l'avortement qui n'ont pas été changés, ont été étudiés par le Comité permanent de la santé, du bien-être et des affaires sociales. Ce comité a eu tout le temps nécessaire de faire venir des témoins du public et des juristes. Je dois nier qu'il s'agit d'un exercice de rédaction de la part de fonctionnaires de la Couronne.

Ce bill a été étudié à fond par les juristes et on a reçu beaucoup de suggestions des membres de cette profession, les professeurs, les avocats, les juges, les procureurs de la Couronne, les magistrats, les conseillers juridiques, de toutes les parties du pays. Ces suggestions ont été incorporées dans le bill et reflètent les différences entre le bill C-195 et le présent bill. Ceci dit, je pense qu'on doit laisser cette question au comité directeur.

Le président: Je propose que, après midi nous tenions une réunion du comité directeur et que, en attendant nous étudions l'article 7.

M. Valade: Monsieur le président, je pense que vous m'avez donné la parole.

Le président: Oui, M. Valade.

M. Valade: Je ferai quelques remarques en anglais. Le comité décide que nous pouvons

[Text]

that we can vote on this clause without hearing any witnesses or any professional opinion on this matter.

The Chairman: No ruling was made, Mr. Valade. If we decide to proceed on this clause, after the meeting ends at 12 o'clock, we will hold the steering committee meeting. But if we proceed...

Mr. Valade: If we vote on this clause, then there is no use calling in expert witnesses.

Mr. Chairman: That would be correct.

M. Valade: Monsieur le président, dans les circonstances, il est proposé que l'article 149A du bill C-150 soit rayé.

In English, it is moved that Section 149A of Bill C-150 be deleted. I have both French and English. I will explain my reasons, Mr. Chairman, after you read the motion.

Mr. Hogarth: May that motion be read again?

The Chairman: It is moved by Mr. Valade that section 149A of Bill C-150 be deleted.

Mr. Hogarth: Should not that be a redraft of clause 7?

The Chairman: Should it not read that clause 7 be deleted?

Mr. Valade: I refer to the article itself and the bill.

The Chairman: Mr. Valade, it would be more proper to have the motion read "Clause 7".

Mr. Valade: Will the Chairman please make the correction?

The Chairman: Clause 7, referring to Section 149A.

• 1015

M. Valade: Monsieur le président, les raisons qui ont motivé cette motion sont les suivantes:

D'abord, je considère que le bill C-150 sur la question de l'homosexualité, contrairement aux remarques du ministre, favorisera l'expansion de ce fléau social. Il aura aussi pour effet de propager et de multiplier l'activité des perversés sexuels, et de plus, il fait la publicité de cette tendance.

Deuxièmement, monsieur le président, ce comité n'a pas devant lui les expertises, les études nécessaires pour orienter d'une façon

[Interpretation]

prendre le vote sur cet article sans faire venir des témoins ou des experts juridiques.

Le président: Il n'y a pas eu de décision. Si nous décidons d'étudier cet article, après l'ajournement, ce midi, nous tiendrons une réunion du comité de direction, mais si nous procédons...

M. Valade: Si nous prenons un vote sur cet article, il est, par conséquent, inutile de faire venir des experts.

Le président: Vous avez raison.

Mr. Valade: Mr. Chairman, under the circumstances, it is proposed that clause 149-A of Bill C-150 be deleted.

En anglais, la motion est que l'article 149(a) du Bill C-150 soit supprimé. J'ai le texte anglais et le texte français. Je vais vous donner mes raisons après que vous aurez lu la motion.

M. Hogarth: Est-ce qu'on pourrait relire la motion, s'il vous plaît?

Le président: Il est proposé par M. Valade que l'article 149A du bill C-150 soit supprimé.

M. Hogarth: Est-ce que la motion ne devrait pas plutôt dire l'article 7?

Le président: Monsieur Valade, ne serait-il pas mieux que votre motion précise l'article 7?

M. Valade: Je renvoie à l'article et au Bill.

Le président: Il serait préférable de préciser l'article 7.

M. Valade: Je demanderais au président de faire la correction.

Le président: L'article 7 du Bill relatif à l'article 149A de la Loi.

Mr. Valade: Mr. Chairman, the reasons for making the proposal are as follows:

First of all, I consider that Bill C-150 with regard to the question of homosexuality, contrary to the remarks made by the Minister will encourage the spreading of this social evil. It will also favour and multiply the activity of sexual perverses, and, in addition, it advertizes this tendency.

Secondly, Mr. Chairman, this Committee does not have the services of experts, nor the necessary surveys to provide adequate and

[Texte]

adéquate et ouverte, le jugement des membres de ce comité.

Troisièmement, les recherches presque in-existantes sur cette question de l'homosexualité ne nous permettent pas encore de cataloguer le phénomène, soit sous l'étiquette de l'acte criminel, de la déformation psychique, psychiatrique ou sociologique, ou d'un état purement maladif pouvant être corrigé par la science médicale.

Quatrièmement, la législation telle que formulée au sujet de l'acte contre nature qu'est l'homosexualité, accentuerait de façon désastreuse le problème du contrôle de ce fléau dans les institutions pénitentiaires.

Cinquièmement, le rapport Marcus, soumis au gouvernement fédéral, souligne le «manque flagrant d'enquête psycho-sociale dans ce domaine».

Sixièmement, la législation avec les normes suggérées actuellement risquerait d'augmenter le nombre de criminels sexuels.

Septièmement, la preuve de l'âge des personnes consentantes trouvées dans des lieux non-publics ne pourra être établie facilement par les officiers de la loi, puisqu'une simple carte de membre d'un club d'homosexuels mentionnant un âge falsifié contournerait la loi actuellement suggérée.

Huitièmement, des enquêtes sur cette question sont actuellement en cours dans d'autres pays et je crois qu'il serait avantageux que ce Comité en prenne connaissance, avant de prendre une décision.

Monsieur le président, comme dernière remarque, je voudrais ajouter que j'ai récemment pris connaissance d'un volume traitant de cette question, qui condensait le résultat d'études faites à Genève il y a quelques années. Cette équipe de chercheurs était constituée de criminologues de grande réputation, de sociologues, de psychiatres, de psychologues, enfin de spécialistes de toutes les sciences voisines de la science criminelle et de la science médicale qui n'ont pas encore déterminé, malgré leur compétence, leurs études et leurs recherches, s'ils peuvent conclure que l'homosexualité peut être classifiée comme crime ou comme maladie.

Monsieur le président, puisque nous sommes ici pour juger nous-mêmes de ce phénomène, sans témoins, sans expertises, avec nos piètres connaissances de ce sujet, je prétends qu'il est trop tôt pour que nous acceptions, comme il est actuellement formulé cet article sans avoir la possibilité d'entendre des témoins, pour nous éclairer sur la substance et sur l'aspect légal de ce texte de loi.

Merci, monsieur le président.

[Interprétation]

open minded guidance for the judgment of the members of this Committee.

Thirdly, the practically non-existent research on this question of homosexuality does not enable us yet to catalogue the phenomenon on either under the label of a criminal act, psychic, psychiatric or sociological deformation, or simply an illness which can be cured by medical science.

Fourth, the legislation as drafted with regard to the act against nature that is homosexuality would accentuate disastrously the problem of controlling this evil in penitentiary institutions.

Fifth, the Marcus Report submitted to the federal government points out the flagrant lack of psycho-social research in this field.

Sixth, with the standards that are suggested at the present time, the legislation would risk to increase the number of sex criminal.

Seventh, the proof of age of consenting persons found in non-public places could be easily established by officers of the law, since a simple membership card to a homosexual club mentioning a false age would enable the holder to circumvent the proposed Act.

Eighth, inquiries on this question are now underway in other countries and I believe that it would be of benefit to this Committee to read the results of these inquiries before taking a decision.

Mr. Chairman, in conclusion I would like to inform the Committee that recently I found a book on this matter which summarized the results of inquiries made in Geneva several years ago. This team of researchers was composed of criminologists of high reputation, sociologists, psychiatrists, psychologists, briefly, representatives of all disciplines related to criminal as well as medical science, and with all their expertise, their studies and their research, they have not yet been able to determine if homosexuality can be classified as a crime or an illness.

Therefore, Mr. Chairman, since we are here to judge this phenomenon ourselves without witnesses, without expertise, with the little knowledge we have of this subject, I maintain that it is too soon for us to accept this clause as presently drafted, without having the opportunity of hearing witnesses to enlighten us on the substance and the legal aspect of this bill.

Thank you, Mr. Chairman.

[Text]

The Chairman: Thank you, Mr. Valade. Any further comments?

Mr. McCleave: Could I just raise a point of order? Are we asked to vote on this now or, if there is to be no further discussion, can this not be held for a vote at a future time until the steering committee has brought in the recommendation? I do not know, but I gather that if Mr. Woolliams is allowed to call one or two witnesses, they might speak on this particular matter.

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I gather that Mr. Woolliams' witness might have something to say on this section. So it seems to me that if the Committee is agreeable, Mr. Valade's motion might be held for determination until after the steering committee has met, and we could turn on to something else.

If that course is acceptable, I would like to give notice of a motion on a point that I raised the other day. I realize that it is probably unorthodox to submit an amendment when there is one before you to knock out the section itself but I do have one that I could give notice of now if the Committee was prepared to hear it.

The Chairman: My ruling would be that we hear argument on this motion. I think Mr. Rondeau wished to speak. I see no reason why the motion could not be put and, if it is passed, of course, all clauses relating to it removed. If it is defeated, then I think we can still proceed, and no final decision will be made on the clause anyway until the steering committee meets at 12 o'clock.

Mr. Hogarth: Mr. Chairman, on a point of order, are we now speaking on the amendment...

The Chairman: No, we are now speaking on the main motion. The main motion was the amendment proposed by Mr. Valade.

Mr. Rondeau.

Mr. Rondeau: Monsieur le président, au sujet de la motion présentée par l'honorable député de Sainte-Marie, j'estime qu'il serait opportun de retarder actuellement, l'adoption du paragraphe 149A de l'article 7 pour plusieurs raisons. Non seulement le comité directeur devrait étudier la question, mais les députés eux-mêmes, et je me place à un point de vue général, ne sont pas encore fixés sur cette question et nous devrions attendre de connaître l'opinion du public concernant ce sujet qui est extrêmement controversé. Il y a

[Interpretation]

Le président: Merci, monsieur Valade. Est-ce qu'il y a d'autres commentaires?

M. McCleave: Un point d'ordre. Est-ce qu'on ne peut pas déférer les votes à plus tard, en attendant la recommandation du comité de direction. Je ne sais pas, mais si j'ai bien compris, si M. Woolliams fait venir deux ou trois témoins, ces témoins parleront probablement de cet aspect de la question.

Le témoin proposé par M. Woolliams aura probablement quelque chose à dire au sujet de cet article. Il me semble donc que, si le comité est d'accord, on pourrait réserver la motion de M. Valade jusqu'à ce que l'on connaisse le résultat de la réunion du comité directeur.

Si tout le monde est d'accord, je voudrais donner avis d'une motion sur le point que j'ai soulevé l'autre jour. Je me rends compte que c'est probablement une façon peu orthodoxe de procéder, lorsqu'on a déjà une modification à l'article lui-même à étudier, mais je pourrais donner avis d'une motion maintenant, si le Comité le permettait.

Le président: Je pense que nous devrions discuter de cette motion. Je crois que M. Rondeau avait quelque chose à dire. Je ne vois pas pourquoi la motion ne pourrait pas être présentée et, si elle est adoptée, bien sûr, tous les articles qui s'y rattachent seront supprimés. Si la motion est rejetée, nous pourrions continuer, et l'on ne prendra de toute façon aucune décision finale sur l'article avant la réunion du comité de direction qui aura lieu à midi.

M. Hogarth: Monsieur le président, un rappel au Règlement. Parlons-nous actuellement de la modification...

Le président: Non, nous parlons de la motion principale, à savoir, la modification proposée par M. Valade. Monsieur Rondeau.

Mr. Rondeau: Mr. Chairman, regarding the motion presented by the hon. member for Sainte-Marie, I think it would be advisable to delay, right now, adoption of subclause 149(A) of clause 7, for several reasons. Not only should the Steering Committee study the question, but the members themselves, and I am speaking in general, have not yet made up their minds on this question and we should wait to find out what public opinion is on this highly controversial subject. There has been a lack of information. The experts

[Texte]

eu manque d'information, les spécialistes en ce domaine ne sont pas encore unanimes, nous ne devons pas attendre qu'ils le soient non plus, mais c'est une question dont on a beaucoup parlé au cours des dernières années.

Quelles sont les solutions à apporter au problème de l'homosexualité? Étant donné que ces solutions ne sont pas encore clairement établies dans le public, qu'elles ne sont pas conçues d'une façon claire, je pense que, légiférer sur l'homosexualité actuellement, est prématuré en fonction des solutions qui peuvent s'offrir à nous. S'il nous était possible consulter des spécialistes dans ce domaine, nous pourrions voir plus clairement et plus facilement ceci: lorsque le ministre de la Justice nous dit, par exemple, qu'il a consulté beaucoup de personnes à ce sujet, pour ma part, non pas que je veuille douter de sa parole, mais, je suis porté à croire que le même groupe de personnes qui ont été consultées étaient toujours de la même opinion, mais nous n'avons pas su encore les réactions de ceux-là qui étaient contre ou exprimaient des doutes quant à cette législation.

Maintenant, je me pose de sérieuses questions aussi quant à la rédaction de ces articles. Pourquoi l'homosexualité serait-elle criminelle avant 21 ans et ne le serait pas passé cet âge? Ce sont là des questions qui me viennent à l'esprit et qui sont difficiles à cataloguer. Nous n'avons pas d'idées précises sur cette question, le public manque d'information, et nous ne pouvons l'en blâmer, car nous-mêmes nous en manquons. J'appuie donc la proposition que l'honorable député de Sainte-Marie a faite de mettre de côté cet article du présent Bill pour pouvoir l'étudier.

Quant au travail que devra faire le comité directeur aujourd'hui, peut-être y aurait-il moyen de limiter, si nous pouvons reprendre cette discussion, les témoins aux sujets les

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plus controversés, comme, par exemple, l'homosexualité, l'avortement et ainsi de suite, et que le Comité pourrait continuer l'étude de ce Bill...

The Chairman: Mr. Rondeau, would you please direct your remarks to the motion before the Committee.

M. Rondeau: Monsieur le président, justement, ceci est en accord avec ces remarques. Nous pourrions continuer l'étude de ce Bill et mettre de côté les articles controversés pour pouvoir mieux l'étudier à la fin. Nous aurions la chance de pouvoir assigner des témoins, à différents intervalles afin d'étudier les sujets où nous sommes presque tous d'accord.

[Interprétation]

in this field are not yet unanimous on this question and we should not expect them to be, but this is a question which has been much discussed over the past few years.

What are the solutions to the problem of homosexuality? As the public does not yet have a clear idea as to the solutions and as they are not clearly conceived, I think that to legislate on homosexuality at the present time would be premature because of the solutions which might be proposed to us if we could consult experts in this field. We might be able to see more clearly into certain things like, for instance, when the Minister of Justice states that he has consulted many people in this respect. For my part, not that I want to doubt his work, but I am led to believe that the same group of persons who have been consulted were always of the same opinion, whereas we have not yet heard the reactions of those who were against or expressed doubts as to this legislation.

I have also asked myself some serious questions as to the drafting of these clauses. I wonder why homosexuality should be criminal before 21 and not after. These are all questions which come to my mind and which are difficult to classify. We are not clear on this question, the public lacks information, and it cannot be blamed for this because we also lack information. Therefore, I second the motion made by the hon. member for Sainte-Marie to reserve this clause of the present bill in order to give it more consideration.

As to the job to be done today by the Steering Committee, it might be possible—if we can resume this discussion—to limit the witnesses to the most controversial subjects,

such as, for example, homosexuality, abortion, et cetera, and the Committee might continue the consideration of the bill

Le président: Monsieur Rondeau, pourriez-vous, s'il vous plaît, faire porter vos remarques sur la motion à l'étude.

Mr. Rondeau: Mr. Chairman, this is in agreement with those remarks. We would continue studying the bill and stand the controversial clauses in order to study them more thoroughly at the end. We would have the opportunity of calling witnesses at various periods of time in order to consider the subjects on which we are nearly all agreed.

[Text]

Or, je suis donc en faveur, pour le moment, étant donné que nous n'avons pas d'autre choix, de mettre de côté cet article du Bill pour pouvoir connaître plus facilement les pour et les contre d'un sujet aussi controversé et même remettre à plus tard ces articles-là, quitte à les reprendre dans un an ou dans deux ans. Nous ne sommes pas obligés d'accepter toute cette législation, aujourd'hui s'il y a des sujets qui sont trop controversés, tel cet article, nous pouvons le mettre de côté et le gouvernement pourrait revenir dans un an ou dans deux ans d'ici, avec une législation qui, alors rencontrera plus facilement nos opinion et celles du public.

The Chairman: Thank you very much.

Mr. McQuaid: Mr. Chairman, I would be prepared to support this amendment until somebody is able to convince me that the amendment proposed by Clause 7, does make some useful change in the law as it presently exists. As I see it, all the proposed amendment, Clause 7, does is remove from the Criminal Code these acts which are defined in Sections 147 and 148—acts of buggery and bestiality and indecent assaults on males. If we moved these offences from the Code, provided they are committed by two consenting adults, two people over 21 years of age, and provided that they are not committed in public, my suggestion is that in actual effect this does not make too much difference in the law as it presently exists.

I would like to have somebody tell me how many cases have been brought before the courts in recent years resulting in convictions of two people who have committed acts of this nature in private, they being adults. I have made a search and I have not been able to find too many cases of actual convictions for this particular offence. My suggestion is that the amendment does not really effect any great change in the law as it presently exists.

I read not so very long ago of a study made last year, I believe, of 60 Toronto cases resulting in convictions for gross indecency, and this study came up with the result that 59 of those who were convicted at that time could still be convicted under this proposed amendment. So, in effect, as I see it, it does not make any material change in the law as it presently exists at all.

Another fault I find with it is that gross indecency is still not spelled out. What does gross indecency mean? Gross indecency is not defined in the Code. Section 149 says:

Every one who commits an act of gross indecency with another person is guilty

[Interpretation]

Therefore, I agree, for the present, as we have no other course open to us, to stand this clause of the bill in order to be able to know more about the pros and cons regarding such a controversial subject, and even reserve these clauses until some later date in order to take them up again in one or two years. We are not obliged to accept all the legislation today. If there are subjects which are too controversial such as this clause, we can stand it and the government could present new legislation in a year or two which would be better adapted to our opinion and that of the public.

Le président: Merci beaucoup.

M. McQuaid: Monsieur le président, je serais prêt à appuyer cette modification jusqu'à ce que l'on réussisse à me convaincre que la modification proposée par l'article 7 apporte un changement utile à la loi telle qu'elle existe en ce moment. A mon avis, tout ce que fait la modification proposée dans l'article 7, c'est supprimer du Code criminel les actes mentionnés aux articles 147 et 148—sodomie, bestialité, et attentats à la pudeur commis envers des personnes du sexe masculin. Si nous supprimons du Code ces délits, à la condition que ces actes soient commis entre deux adultes consentants, âgés de plus de 21 ans, et qu'ils ne soient pas commis en public, à mon avis, cela ne change pas grand-chose à la loi actuelle.

J'aimerais que quelqu'un me dise combien de cas ont été cités devant les tribunaux au cours des dernières années et ont résulté en une condamnation, lorsqu'il s'agissait d'actes commis dans l'intimité entre deux adultes. J'ai fait des recherches, et je n'ai pas trouvé beaucoup de cas de condamnation pour ce délit particulier. A mon avis, la modification n'apporte pas grand changement à la loi telle qu'elle existe actuellement. J'ai lu, il y a quelque temps, une étude faite l'an dernier, je crois, qui portait sur 60 causes entendues à Toronto et ayant résulté en une condamnation pour grossière indécence; on a trouvé que 59 des personnes qui ont été condamnées à l'époque pourraient toujours être condamnées en vertu de la nouvelle loi proposée. Par conséquent, je ne pense pas que cet article modifie en quoi que ce soit la loi actuelle.

Une autre lacune, à mon avis, de la modification proposée, c'est que la grossière indécence n'est toujours pas définie. En quoi consiste la grossière indécence? Elle n'est pas définie dans le Code. On dit, à l'article 149:

Est coupable d'un acte criminel est passible d'un emprisonnement de cinq ans,

[Texte]

of an indictable offence and is liable to imprisonment for five years.

What constitutes an act of gross indecency? Surely, if we are going to amend it in the manner suggested here we should define what is meant by this act of gross indecency. It is for that reason, that I cannot see how the proposed amendment makes any material change in the law, that I would be prepared to support the amendment and have the section struck out.

The Chairman: Mr. McQuaid, I thank you for your contribution. I think what we will do at this time is stand Clause 7, if the Committee agrees, and also stand the motion before the Committee. We will have our steering committee meeting at noon and then we can proceed at 3.30 p.m. In the meantime, I would

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suggest, if it is agreeable to the Committee, we call Clause 8. I do not think it should be too controversial.

Is that agreed?

Some hon. Members: Agreed.

On Clause 8—Court.

The Chairman: Are there any questions on Clause 8?

Clause 8 agreed to.

The Chairman: I think it might be advisable to call Clause 6—Firearm. We can at least get started. Clause 6 on page 5. Mr. McCleave.

Mr. McCleave: In this case we have a happy solution to the answer regarding professional witnesses in that two of them who represent, I think, four associations—and one has the advantage of being a very respected retired police officer so his police point of view is also in—have submitted a two-page letter to the Committee. This was done yesterday, and unfortunately I could not get a translation into French, but, if you wish, I could read it so that the interpretation could be made at the same time, and the members would have copies that they could follow along, if that is the pleasure of the Committee.

I might say, these two people are R. C. Passmore, the executive director of the Canadian Wildlife Federation, and Mr. L. H. Nicholson, past president and life governor of the Dominion of Canada Rifle Association. It is likely that they reflect the views of the Shooting Federation of Canada as well.

[Interprétation]

quiconque commet un acte de grossière indécence avec une autre personne.

En quoi consiste un acte de grossière indécence? Assurément, si nous voulons modifier l'article de la manière proposée ici, il faudrait définir ce que l'on entend par un acte de grossière indécence. C'est pour cela que je ne vois pas que cette modification apporte un changement sensible à la loi, et que je serais prêt à appuyer l'amendement et à faire abolir cet article.

Le président: Merci pour votre contribution, monsieur McQuaid. Je pense que ce que nous allons faire à ce stade, si le Comité est d'accord, c'est réserver l'article 7, ainsi que la motion présentée au Comité. La réunion du comité directeur aura lieu à midi, et nous reprendrons nos travaux à 3h30. Entre-temps,

je propose que nous mettions en délibération l'article 8, si le Comité est d'accord. Je ne pense pas que cet article-là soulèvera trop de controverse. D'accord?

Des voix: D'accord.

Article 8—«cour».

Le président: Y a-t-il des questions sur l'article 8?

L'article 8 est adopté.

Le président: Je crois qu'il serait bon de mettre en délibération l'article 6—«armes à feu»—qui figure à la page 5 du bill. Nous pourrions du moins commencer. Monsieur McCleave.

M. McCleave: Dans ce cas, nous avons une solution heureuse à la question des témoins professionnels, puisque deux d'entre eux, qui représentent, je crois, quatre associations—et l'un d'eux est un agent de police à la retraite très bien considéré, si bien que nous aurons aussi le point de vue de la police—ont envoyé au Comité une lettre de deux pages. Nous l'avons reçue hier, et, malheureusement, je n'ai pu obtenir de traduction en français. Mais, si vous le voulez, je vais vous la lire, et vous aurez ainsi en même temps l'interprétation; si le Comité le veut ainsi, on distribuera plus tard des exemplaires de la lettre.

Ces deux personnes sont M. R. C. Passmore, directeur exécutif de la Fédération canadienne de la faune, et M. L. H. Nicholson, ancien président et gouverneur à vie de la Dominion of Canada Rifle Association. Il est fort probable que leurs observations refléteront aussi le point de vue de la *Shooting Federation of Canada*.

[Text]

Mr. Hogarth: What is the date on those copies?

Mr. McCleave: The date is yesterday, March 5, 1969.

An hon. Member: Mr. Chairman, just on a point or order.

Mr. Blair: Has this letter been submitted to the Committee, or submitted to the Member?

Mr. McCleave: It was submitted to the Committee.

Mr. Blair: Why have we not got copies of it?

Mr. McCleave: You will have. It just got to me yesterday.

Mr. Blair: And are you the Committee or a member of the Committee? That is what I am asking.

The Chairman: Well, Mr. Blair, I think in fairness to Mr. McCleave, we did discuss this in the Steering Committee. Mr. McCleave wanted to bring a witness or two witnesses. We arrived at this happy device that he would actually make the presentation that these two witnesses might make. I had also thought that perhaps we would do the same thing with Mr. Woolliams' witnesses but evidently this may not be the case. Mr. McCleave.

Mr. Blair: I withdraw my comment.

Mr. Hogarth: Mr. Chairman, on a point of order. You are calling Clause 6 but did we not stand Clause 2, subsection 4 to be dealt with under Clause 6?

The Chairman: Yes.

Mr. Blair: We are now dealing with both?

The Chairman: Yes. Mr. McCleave.

Mr. McCleave: Yes, Mr. Chairman.

The Chairman: Perhaps, Mr. McCleave, the Minister could make an opening statement; it might be helpful to the Committee.

Mr. Woolliams: I would love to hear the Minister.

Mr. Turner (Ottawa-Carleton): Mr. Chairman, gentlemen, Clause 6 and related Clause 2(4) repealing the definition of "Offensive weapon" and substituting a new definition, deal with the whole subject of firearms.

[Interpretation]

M. Hogarth: Quelle est la date de ces lettres?

M. McCleave: Elles sont datées d'hier, le 5 mars 1969.

Une voix: Monsieur le président, un rappel au Règlement.

M. Blair: Cette lettre a-t-elle été adressée au Comité ou au député?

M. McCleave: Au Comité.

M. Blair: Pourquoi ne nous en a-t-on pas donné un exemplaire?

M. McCleave: On vous en donnera.

M. Blair: Et représentez-vous le Comité ou un membre du Comité? C'est cela que je veux savoir.

Le président: Monsieur Blair, je dois dire pour M. McCleave que nous avons parlé de cela au comité de direction. M. McCleave voulait faire venir un ou deux témoins. Nous en sommes arrivés à cet heureux compromis, à savoir, qu'il ferait lui-même une présentation au nom de ces deux témoins. J'avais aussi pensé que nous pourrions faire la même chose dans le cas des témoins de M. Woolliams, mais il semble que ce ne sera pas le cas. Monsieur McCleave.

M. Blair: Je retire ce que j'ai dit.

M. Hogarth: Monsieur le président, un rappel au Règlement. Vous mettez en délibération l'article 6: mais n'avons-nous pas réservé le paragraphe (4) de l'article 2 afin de l'étudier conjointement avec l'article 6?

Le président: Si, en effet.

M. Blair: Étudions-nous maintenant les deux articles à la fois?

Le président: Oui. Monsieur McCleave?

M. McCleave: Oui, monsieur le président.

Le président: Monsieur McCleave, peut-être le Ministre pourrait-il faire une déclaration préliminaire; cela pourrait aider le Comité.

M. Woolliams: Je serais très heureux d'entendre le Ministre.

M. Turner (Ottawa-Carleton): Monsieur le président, messieurs, l'article 6, et le paragraphe (4) de l'article 2 qui s'y rattache, et qui abolit la définition actuelle de «arme offensive» pour la remplacer par une autre, traitent de toute la question des armes à feu.

[Texte]

The Clause amends the Criminal Code by repealing 17 sections, from 82 to 98. It re-enacts some of them and makes a number of new provisions to tighten control over possession and use of firearms and other weapons in the general interest of public safety. The principal aim is to keep lethal weapons out of the hands of criminals or persons who by reason of mental instability or a danger to themselves and law-abiding citizens.

The amendments are also designed to penalize the criminally careless use of firearms and to keep any firearms out of the hands of persons under 17 years of age, except in supervised conditions, unless a permit has been obtained.

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Adequate provision is made, including certain rights of appeal which are not presently available in the Code, for those who are interested in target shooting and gun collecting. The general framework of the revision and a number of the new provisions derived from a scheme of revision of the firearms provisions prepared some eight years ago by a departmental committee and which was considered by the Criminal Law Section of the Conference of Commissioners on Uniformity of Legislation in Canada as long ago as 1961 and then again in 1964 and approved in principle by them, that is to say, by the representatives of the Provincial Attorneys General.

Many representations on firearms were received following the introduction of Bill C-195, the predecessor to this bill, and I had several meetings with representatives of interested organizations. In fact, I had one long meeting with Mr. Nicholson and Mr. Passmore. As a result of that meeting, on behalf of the four federations or national clubs he represents, there were some significant changes eliminating some of the arbitrary provisions in Bill C-195 and they do not appear in Bill C-150. After the publication of Bill C-150 I had another hour interview with Mr. Nicholson where he put further points to me about some of the provisions as they affected younger people under 17 and 14. Those points, I am sure, will be made in the letter. I have not seen the letter. We have taken the view that we have probably gone about as far as we can go in favour of young people without losing control over the careful handling of firearms.

[Interprétation]

Cet article modifie le Code criminel en abrogeant 17 articles, de 82 à 98. Il remet en vigueur certains d'entre eux et prévoit un certain nombre de nouvelles dispositions visant à rendre plus stricte la surveillance de l'utilisation et de la possession d'armes à feu ou d'autres armes, dans l'intérêt général du public. L'objet principal en est de retirer les armes mortelles des mains des criminels ou des personnes qui, pour des raisons d'instabilité mentale, sont un danger pour les citoyens respectables et pour elles-mêmes.

Ces modifications ont aussi pour objet de punir la négligence criminelle dans l'utilisation des armes et d'empêcher les jeunes de moins de 17 ans de posséder des armes, sauf s'ils sont sous surveillance, à moins qu'ils ne détiennent un permis.

On prévoit des dispositions spéciales, y compris certains droits d'appel qui n'existent pas actuellement dans le Code, pour ceux qui veulent faire du tir à la cible ou collectionner des carabines. Le contexte général de la révision et un certain nombre des nouvelles dispositions ont été tirés d'un programme de révision des dispositions relatives aux armes à feu, préparé il y a environ 8 ans par un comité du ministère; la section du droit criminel de la Conférence des commissaires, relative à l'uniformité des lois au Canada, avait étudié ce programme de révision dès 1961, et de nouveau en 1964, et la Conférence, composée des représentants des procureurs généraux des provinces, avait approuvé ce programme en principe.

Il y avait eu bien des plaintes concernant les armes à feu après la présentation du bill C-195, qui avait précédé le bill actuel, et j'avais eu plusieurs entretiens avec des représentants des associations intéressées. A vrai dire, je m'étais longuement entretenu avec M. Passmore et M. Nicholson. Par suite de cet entretien, on avait apporté, dans l'intérêt des quatre fédérations ou clubs nationaux que ces personnes représentent, des modifications importantes en vue de retirer du bill C-195 certaines dispositions arbitraires, qui ne figurent pas dans le Bill C-150. Après la publication du Bill C-150, j'ai encore eu un entretien d'une heure avec M. Nicholson, qui m'a indiqué d'autres points concernant les dispositions relatives aux jeunes de moins de 17 ans et aux enfants de moins de 14 ans. Je suis sûr que ces points seront mentionnés dans la lettre, que je n'ai pas encore vue. A notre avis, nous sommes sans doute allés aussi loin que nous le pouvions en faveur des jeunes sans perdre notre contrôle pour assurer l'utilisation prudente des armes à feu.

[Text]

I have also put forward certain new proposals which were not contained in Bill C-195, notably Section 86 (b) relating to negligent use of firearms. The section which will permit prosecution of those who handle or carry or use firearms in a manner disregarding the safety of others, particularly in the woods—the trigger-happy hunter. At the moment there is only one charge that can be laid against that type of conduct and that is criminal negligence, with a maximum penalty of life, imprisonment and juries just will not convict. This new offence has a maximum penalty of two years and we hope that it will induce those who take guns into the woods to use them with a little more care for the health, safety and lives of other human beings who may be in the woods at the same time, other hunters in particular.

There is a new Section 88, subsection (2) prohibiting the sale to persons of unsound mind; and Section 98G, providing law enforcement authorities with a new procedure to assist them in safeguarding the public from the threat posed by the possession of weapons and explosives by persons who, for example, become insane, mentally ill or of unsound mind.

That is my general statement. I believe that the gun law is a tougher gun law, moving to try to control the distribution of weapons to the criminal element and to the irresponsible element in our society and yet retaining a balance in favour of those who legitimately use firearms for the purpose of sport or legitimate hunting. That is the rationale behind the new amendments. Thank you very much, Mr. Chairman.

The Chairman: Thank you, Mr. Minister. Mr. McCleave.

Mr. McCleave: I shall read the memo that has been sent, Mr. Chairman, if I may.

Mr. Hogarth: On a point of order, Mr. Chairman, should we not start section by section on this?

The Chairman: I think in this particular situation this indulgence should be granted. As I stated, this was discussed in the Steering Committee. I do not think that this will be a precedent. This particular situation, I think, is warranted.

[Interpretation]

J'ai aussi signalé certaines nouvelles dispositions proposées qui ne figuraient pas dans le Bill C-195, en particulier au sous-alinéa b) de l'article 86, relatif à l'utilisation négligente d'armes à feu. Il s'agit de l'article qui permettra d'entamer des poursuites contre ceux qui manient, portent ou utilisent des armes à feu d'une manière qui met en danger la sécurité d'autrui, en particulier dans les bois—je pense surtout aux maniaques de la gachette parmi les chasseurs. Pour le moment, il n'y a qu'une accusation que l'on puisse porter contre les personnes qui se conduisent de la sorte: la négligence criminelle, qui entraîne une peine maximum de détention à vie, et les jurés refusent catégoriquement la condamnation. Selon la modification proposée, la peine maximum sera de deux ans, et nous espérons que cela amènera les chasseurs à utiliser leurs carabines avec un peu plus de prudence, dans l'intérêt du bien-être, de la sécurité et de la vie des autres êtres humains qui peuvent se trouver dans le bois à ce moment-là, en particulier les autres chasseurs.

Il y a un nouveau paragraphe (2) de l'article 88 qui interdit la vente d'armes offensives aux personnes privées de raison; et l'article 98G, qui donne aux autorités chargées de faire respecter la loi de nouveaux recours qui leur permettront de protéger le public de la menace que représente la possession d'armes et d'explosifs par des personnes qui, par exemple, deviennent folles, sont atteintes de maladie mentale, ou perdent la raison. C'est là ma déclaration générale. La Loi sur les armes à feu est, à mon avis, plus stricte qu'auparavant. On essaie de contrôler la distribution d'armes aux criminels et aux membres de notre société auxquels on ne peut faire confiance, tout en maintenant l'équilibre en faveur de ceux qui se servent légitimement d'armes à feu pour le sport ou pour la chasse. Voilà le raisonnement sur lequel se fondent les nouvelles modifications. Merci beaucoup, monsieur le président.

Le président: Merci, monsieur le ministre. Monsieur McCleave.

M. McCleave: Si vous le permettez, monsieur le président, je vais vous lire le mémorandum qui nous a été envoyé.

M. Hogarth: Un rappel au Règlement, monsieur le président. Est-ce qu'on ne devrait pas procéder à l'examen article par article?

Le président: Je crois que dans ce cas particulier, nous devrions autoriser la lecture de cette lettre. Je l'ai dit, nous en avons parlé au comité de direction. Je ne pense pas que cela créera un précédent. La chose se justifie, je crois, dans ce cas particulier.

[Texte]

Mr. Hogarth: It does, sir, except that this letter refers to two sections which are coming up.

The Chairman: Well, let us hear the statement and then we can make a decision.

Mr. McCleave: The memo reads:

Re: Section 6 (firearms), Bill C-150

The Canadian Wildlife Federation has maintained a strong interest in firearms legislation, as expressed in the Criminal Code, over a period of several years. It was our brief to the Minister of Justice, presented in January, 1967, which proposed that careless use of firearms be made an offence under the Criminal Code, that the privilege of possession of firearms be withdrawn from persons convicted of crimes involving firearms and that provisions be made for seizure of weapons from persons of unsound mind. All of these recommendations are reflected in the wording of Section 6 of Bill C-150.

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Bill C-195, given first reading in the House of Commons more than one year ago, contained a number of sections with which we were in complete agreement, but it also contained many provisions which would have been oppressively restrictive on legitimate use of firearms in hunting and target shooting. The Shooting Federation of Canada, the Dominion of Canada Rifle Association and the Canadian Wildlife Federation presented a joint brief to the Minister of Justice, in March, 1968, in which a number of alternative proposals were made.

Our subsequent meeting with the Honourable John Turner, in September, was most constructive. Many of the points raised by representatives of these three large, responsible organizations are now included within the firearms section of Bill C-150.

One joint recommendation which was not implemented by the Minister pertains to the age specified for first possession of firearms without the requirement of a permit. Bill C-150 proposes to raise that age from the present 14 years to 17 years. Our objection to this proposed age limit for possession of firearms rest upon four main arguments:

[Interprétation]

M. Hogarth: C'est vrai, monsieur. Mais cette lettre a trait à deux articles que nous sommes sur le point d'étudier.

Le président: Écoutons d'abord la déclaration, puis nous pourrions prendre une décision.

M. McCleave: Voici le mémorandum:

Sujet: article 6 (armes à feu) du Bill C-150. La Fédération canadienne de la faune s'intéresse beaucoup, depuis plusieurs années, aux lois relatives aux armes à feu telles qu'elles figurent dans le Code criminel. C'est dans notre mémoire présenté au ministre de la Justice en janvier 1967 que nous avons proposé que l'utilisation négligente d'armes à feu soit considérée comme un délit en vertu du Code criminel, que le privilège de posséder des armes à feu soit retiré des personnes déjà condamnées pour des délits comportant l'usage d'armes à feu, et l'on prévoit de confisquer les armes à feu détenues par des personnes privées de raison. Toutes ces recommandations se reflètent dans le libellé de l'article 6 du Bill C-150.

Le Bill C-195, qui a reçu une première lecture à la Chambre il y a plus d'un an, renfermait un certain nombre d'articles avec lesquels nous étions entièrement d'accord, mais il renfermait aussi beaucoup de dispositions qui auraient restreint de façon extrême l'utilisation légitime d'armes à feu pour la chasse et le tir. La *Shooting Federation of Canada*, la *Dominion of Canada Rifle Association* et la Fédération canadienne de la faune ont présenté conjointement un mémoire au ministre de la Justice, en mars 1968, et y ont proposé un certain nombre de solutions de rechange.

La réunion qui a eu lieu par la suite avec l'honorable John Turner en septembre a été très constructive. Bon nombre des points signalés par les représentants de ces trois grandes associations dignes de confiance sont maintenant incluses dans l'article du Bill C-150 relatif aux armes à feu.

Une recommandation conjointe qui n'a pas été acceptée par le ministre est celle qui concerne la première possession d'armes à feu sans permis. Le Bill C-150 propose de faire passer l'âge minimum de quatorze à dix-sept ans. Notre objection à cette limite d'âge repose sur quatre points principaux;

[Text]

1. Raising the age limit from 14 to 17 years can surely not have any connection with crime. If it is, rather, intended as a safety measure, one would expect that permits to possess at a younger age would be issued only after the young applicant has demonstrated a knowledge of safe, responsible use of firearms—a provision we have already suggested to the Minister of Justice. If the proposed change in age for first possession is related to neither crime nor safety, we can find no justification for the burden of red tape and inconvenience it will impose upon tens of thousands of young shooters who annually take up some form of recreation involving firearms.

2. Issuing "permits to possess" at ages younger than 17 will, we expect, be carried out in one of two ways. Applications could be processed as a matter of routine, in which case the process would be meaningless and the work-load involved would be unproductive. If, on the other hand, each applicant were to be investigated prior to issuing or refusing the permit, police officers would be called upon to make many arbitrary decisions and would be subject to a time-consuming workload completely out of proportion to the importance of the task.

3. Provincial and territorial hunting regulations permit young persons to be licensed to hunt on their own at ages which range from 14 to 18 years but which, in all but 2 cases, British Columbia and Manitoba, are below 17 years. The age limit proposed in Bill C-150 is at variance with the legislation of 10 of these 12 jurisdictions and would no doubt result in a very large number of applications for "permits to possess". Although we have no basis for estimating the number of such applications, we do estimate that 40,000 to 50,000 persons below the age of 17 now graduate, each year, from hunter safety programs sponsored by or approved by provincial governments. This number will increase rapidly, during the next few years, as more provinces make these hunter safety training programs a mandatory prerequisite to obtaining a hunting license.

4. In all parts of Canada, except Newfoundland, young persons are eligible to obtain a license to drive an automobile at the age of 16. Federal legislation does not restrict this privilege. If a person is ready to take charge of a complex and potentially destructive automobile at 16 years,

[Interpretation]

1. Faire passer l'âge minimum de 14 à 17 ans n'a certainement aucun rapport avec la criminalité. Si c'était prévu comme une méthode de sécurité, on pourrait s'attendre à ce que les permis délivrés aux jeunes le soient après qu'ils aient démontré leur aptitude à utiliser les armes en toute sécurité et c'est quelque chose qui a été suggéré par nous au ministre de la Justice. Si le changement de la limite d'âge n'est lié ni à la criminalité ni à la sécurité, nous ne pouvons voir aucune raison pour cette nouvelle paperasserie et cette nouvelle entrave imposées aux jeunes tireurs qui ont choisi cette forme de distraction.

2. La délivrance des «permis de possession» à un âge inférieur à 17 ans se fera de l'une des deux façons suivantes. Les demandes seront considérées comme une sorte de routine, auquel cas le système n'a aucune raison d'être et le travail qu'il entraînera sera improductif. Si par contre, il faut faire une enquête sur chaque demandeur avant de lui délivrer un permis, les agents de police seront appelés à prendre des décisions arbitraires et en plus, cela leur imposera un surcroît de travail absolument hors de proportion avec l'importance de la tâche.

3. Les règlements de chasse provinciaux et territoriaux permettent aux jeunes de chasser seuls à des âges qui s'échelonnent de 14 à 18 ans, mais tous les cas, sauf 2, la Colombie Britannique et le Manitoba, l'âge est inférieur à 17 ans. L'âge limite proposé par le Bill C-150 est en opposition avec 10 de ces 12 juridictions et cela devrait entraîner je pense un grand nombre de demandes de «permis de possession». Bien que rien ne nous permette d'estimer le nombre de ces demandes, nous estimons que 40,000 à 50,000 personnes de moins de 17 ans, sortent chaque année des cours de sécurité sur la chasse patronnés ou autorisés par les gouvernements provinciaux. Ce nombre augmente rapidement car de nombreuses provinces ont rendu ces cours obligatoires pour obtenir un permis de chasse.

4. Dans tout le Canada, à l'exception de Terre-Neuve, on peut obtenir un permis de conduire à 16 ans. La législation fédérale ne réduit pas ce privilège. Si une personne est prête à se servir d'une machine aussi complexe et dangereuse qu'une automobile à 16 ans, pourquoi ne

[Texte]

one wonders why that person could not also take possession of a firearm at that age or at a younger age.

We are most anxious that young persons should not be discouraged from participating in shooting sports by the age limit proposed in Bill C-150. We would hope that the Commons Committee on Justice and Legal Affairs would recommend an amendment which would specify the age for first possession as 14 years, preferably, and certainly not older than 16 years. We would further recommend that a permit to possess a firearm below the specified age be issued only upon proof that the applicant has an adequate knowledge of the safe handling of firearms.

We will greatly appreciate your consideration of this matter.

It is signed by R. C. Passmore, Executive Director of the Canadian Wildlife Federation and by L. H. Nicholson, Past President and Life Governor, of the Dominion of Canada Rifle Association, and the Shooting Federation of Canada undoubtedly gives its blessings, too, to their presentation.

I would add in closing, Mr. Chairman, thanking the Committee for its patience, that the argument and the recommendations they make, if bought by the members of this Com-

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mittee, involve two changes. The first one is in Clause 87, to change "seventeen" to "fourteen", and Clause 87 is to be found at page 8.

The other change would be to knock out subclause (7) of Clause 97, and that one is found at page 13.

I do not intend to belabour the point as I have probably shot less than 50 bullets in my life, Mr. Chairman, so I am not a gun fan, but I think these are reasoned arguments that hon. members should consider.

The Chairman: Thank you, Mr. McCleave. I suppose that there will be some questions on this section.

Mr. Hogarth: What section are you referring to, sir?

The Chairman: We are referring to the section under consideration, which is Clause 6.

Mr. Hogarth: Are we not going to deal with the offensive weapon definition first in Clause 2?

The Chairman: Yes, that perhaps would be advisable. The Minister has to leave for a Cabinet meeting.

[Interprétation]

serait-elle pas capable de se servir d'une arme à feu au même âge, voir plus jeune.

Nous ne voudrions pas que le Bill C-150 décourage les jeunes de s'adonner au tir, celui-ci étant un sport comme un autre. Nous espérons que le Comité des communes sur la Justice et les affaires légales recommandera un amendement qui autoriserait la première possession d'armes à feu à 14 ans, et en tout cas pas plus tard que 16 ans. Nous recommandons de plus que toute autorisation de possession délivrée à un âge inférieur le soit après que la personne ait prouvé son aptitude à utiliser les armes à feu d'une façon sûre.

Nous apprécierons votre compréhension en ce domaine.

Cette proposition d'amendement est signée de R. C. Passmore, Directeur exécutif de la Fédération canadienne de la faune et par L. H. Nicholson, ancien président et gouverneur à vie de l'Association de tir du Canada, et je pense que la Fédération de Tir du Canada donne également son accord.

J'aimerais ajouter, en terminant, et en remerciant le Comité pour sa patience, que les recommandations formulées, si elles sont acceptées par ce Comité, requièrent deux

modifications. Premièrement, à l'article 87, il faut remplacer «dix-sept» par «quatorze», l'article 87 est à la page 8. L'autre modification serait d'éliminer le paragraphe 7 de l'article 97, au bas de la page 13.

Je n'ai jamais tiré plus de 50 balles dans ma vie, je ne suis pas un spécialiste en la matière, mais je crois que ce sont là des arguments raisonnables qui devraient être pris en considération.

Le président: Merci, M. Cleave. Je suppose qu'il y a des questions sur cet article?

M. Hogarth: De quel article s'agit-il?

Le président: L'article 6.

M. Hogarth: Est-ce que nous n'allons pas traiter d'abord de l'article 2, concernant la définition des armes offensives?

Le président: L'article 2 d'abord, oui, cela paraît souhaitable. Le ministre doit nous quitter pour aller à une réunion du Cabinet.

[Text]

Mr. Turner (Ottawa-Carleton): Mr. Chairman, I wonder whether the Committee will excuse me until this afternoon. If there are any matters pertaining to policy which you want stood over I will be back this afternoon. There are certain matters I have to attend to this morning in Cabinet.

The Chairman: We are now considering Clause 2 subclause (4) on page 3.

Mr. MacGuigan: Mr. Chairman, I have serious concern about one of the words used in that Clause in the proposed 29 (b), the word "uses".

(b) anything that a person uses or intends to use as a weapon...

I believe that the word "weapon" occurs only in Sections 83, 84 and 85 as changed. In Section 83 there is a sufficient qualification so that no problem arises, but with regard to Sections 84 and 85 the effect of the word "uses" is that something used as a weapon like a pocket knife or a nail file which would not normally be considered to be a weapon could subsequently, after an act had occurred in which a crime was committed using those implements, be turned back to convict a person of using an offensive weapon as well as whatever other offence he might have committed.

I do not know whether this is something the Minister might be prepared to consider deleting from Section 29(b) but if it is not deleted from 29(b) I would suggest that there should be some restriction in Sections 84 or 85 to limit the circumstances in which 29(b) could have the effect that I am speaking of.

The Chairman: Mr. Scollin will reply.

Mr. J. A. Scollin (Director, Criminal Law Section, Department of Justice): Possibly the substance of this definition has not been altered. It has been in the Code for some time already.

Mr. MacGuigan: I realize that. I was not on the Committee when it was originally put in the Code.

Mr. Scollin: The word "weapon", of course, is also used in connection with armed robbery, for example. There are other sections of the Code where the word "weapon" is used. The section that you are referring to is Section 84. This corresponds in substance to the present Section 87, again in the Criminal Code, and apparently so far as the jurisprudence shows there has been no problem encountered of the sort that you are mentioning. In these circumstances, since no apparent injustice of any sort has arisen, perhaps more

[Interpretation]

M. Turner (Ottawa-Carleton): Est-ce que le Comité peut m'excuser jusqu'à cet après-midi? S'il y a des questions en matière de politique que vous voulez me poser, je serai de nouveau ici. J'ai une réunion de Cabinet ce matin seulement.

Le président: Nous étudions l'article 2 paragraphe (4) à la page 3.

M. MacGuigan: Monsieur le président, j'ai quelques préoccupations concernant l'utilisation du mot «emploi» dans cet article;

toute chose qu'une personne emploie ou entend employer comme une arme...

Je crois que le mot «arme» n'est utilisé qu'aux articles 83, 84 et 85 amendés; au 83, il n'y a pas de problème, mais, en ce qui concerne les articles 84 et 85, où l'on parle d'«emploi», quelque chose qui n'est pas normalement une arme, comme un couteau de poche ou une lime à ongles pourrait, après un crime, être retenu pour condamner la personne pour port d'«arme offensive», en plus du crime commis. Je ne sais pas si c'est quelque chose que le ministre accepterait d'enlever au (29) b), sinon, il faudrait des restrictions au 84 et au 85 pour éviter ce que je viens d'expliquer.

Le président: Monsieur Scollin?

M. Scollin (Directeur, Section du Droit criminel, ministère de la Justice): Le fond de cette définition n'a pas été modifié. Il a figuré dans le Code depuis longtemps.

M. MacGuigan: Je m'en rends compte, je n'étais pas au Comité lorsque ceci a été inscrit dans le Code.

M. Scollin: Le mot «arme» est également utilisé pour d'autres sections du Code notamment sur les attaques à main armée. Vous avez parlé de la section 84, ceci correspond à la section actuelle 87 du Code criminel et, d'après la jurisprudence, il n'y a jamais eu de problème du genre que vous avez mentionné.

Étant donné qu'il n'y a pas eu d'injustice qui se soit produite, je crois qu'il y aurait peut-être plus de complication à la modifier qu'à la laisser tel quel.

[Texte]

complications might be encountered by altering it than by leaving it as it stands.

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Mr. MacGuigan: Mr. Chairman, with respect I could not agree with that. I quite appreciate that to change the definition here, which might apply to other sections of the Act as well, might create problems that we do not even foresee, so I am willing to leave my argument on this point until we deal with Sections 84 and 85.

However, I do think because no injustice has occurred this fact alone is not sufficient to prevent our considering making a change which would improve the law.

Mr. Hogarth: May I have your point succinctly? It is your suggestion that in subsection (b) the words "uses or" should be struck out so that it reads: "Anything that a person intends to use as a weapon". Is that correct?

Mr. MacGuigan: I have not gone so far as to propose a motion.

Mr. Hogarth: I appreciate that.

Mr. MacGuigan: It is the word "uses" that I am troubled about. Because that means that anything which a person uses as a weapon could subsequently lead to conviction under this sentence, even if it was not the kind of thing that you would normally consider to be a weapon, such as a nail file.

The Chairman: Gentlemen, we are going to get very confused if there is cross-exchange. I think we should abide by our original rule that all questions be directed to the witnesses through the Chair. Have you completed, Mr. MacGuigan?

Mr. MacGuigan: Yes, I have.

The Chairman: Mr. Hogarth?

Mr. Hogarth: On Mr. MacGuigan's point, I do not know whether you want to deal with it further right now because I want to make some observations on other aspects of Subsection 2. The problem I have is why did we not strike out the definition "offensive weapon"? Why do we not just call things "weapons"?

I notice it appears in Section 288 and Section 292, and it does not seem to me to be too offensive, if I may use the word, to change that to "weapon", so that we have one word we are dealing with. Secondly, it seems odd

[Interprétation]

M. MacGuigan: Je ne suis pas d'accord avec cela, monsieur le président. Bien sûr, je sais que la modification de la définition pourrait s'appliquer à d'autres sections de la Loi qu'on a pas prévue, donc, je peux laisser mon argument jusqu'au moment où l'on traitera de la section 84 et 85. Ce n'est pas parce qu'il n'y a pas eu d'injustice jusqu'à présent, que nous ne devons faire aucune modification de la Loi.

M. Hogarth: Pourriez-vous résumer votre point de vue? Vous suggérez à la sous-section b) que les mots «emploie ou entend employer» soient remplacés par «Quoi que ce soit qu'une personne à l'intention d'employer comme une arme». Exact?

M. MacGuigan: Ce n'était pas une motion.

M. Hogarth: Tant mieux.

M. MacGuigan: C'est le mot «emploie» qui me gêne, parce que cela veut dire que n'importe quel objet qu'une personne emploie pourrait par la suite mener à une condamnation en vertu de ce libellé, même s'il ne s'agissait pas de la sorte d'objet qui ne serait pas considéré normalement comme étant une arme, une lime à ongles par exemple.

Le président: Il va y avoir une certaine confusion si nous posons des questions à droite et à gauche. Je crois que nous devrions suivre le règlement et que toutes les questions devraient être posées au témoin ou au président. Est-ce que c'est tout, M. MacGuigan?

M. MacGuigan: Oui, c'est tout.

Le président: M. Hogarth?

M. Hogarth: A propos de la question soulevée par M. MacGuigan, je ne sais pas si vous désirez poursuivre plus loin, parce que je voudrais faire des remarques sur d'autres aspects de l'alinéa 2. Le problème est le suivant: pourquoi n'avons-nous pas biffé la définition «arme offensive»? Pourquoi ne pas appeler ces objets des «armes» tout simplement?

Je remarque qu'on l'emploie dans les articles 288 et 292 et selon moi, ça ne semble pas être trop offensif, si je puis me permettre le mot, de changer cela pour le mot «arme» pour n'avoir qu'un seul mot. En second lieu,

[Text]

to me that you have done that in Sections 83 and 84 which now read an "offensive weapon". We have gone to the pains of amending them so that "offensive" is taken out. And then it appears equally odd to me that in 88, Subsection (2), and in 98, Subsection (g), which are new sections, you have put "offensive weapon" back in again. Why can we not just have the one word "weapon", and start there?

I have a second observation to make. How could the definition under section 29 of "offensive weapon" help but include a firearm? Why did we have to add "includes any firearm as defined in Section 82"? Surely the definition itself automatically includes a firearm.

Mr. Scollin: Well in the main, the effort has been to try and preserve what is already in the Code, in other words, to tamper as little as possible with the established form of the Code. That was not the object or the aim of this particular revision. It was not intended as a tidying-up provision. And in this, as in a number of other areas, the approach has been to leave what is there and has worked, pending perhaps over the course of the next few years a general tidying-up provision, and to add to it the modification contained in Bill C-150. I agree that there is a certain logic to saying that there is no need for two terms to be defined, "offensive weapon" and "weapon", when both are defined in exactly the same way. But in line with this principle, these and other similar situations have been left.

Mr. Hogarth: I accept your statement of principle. But why, when you amended 83 and 84, did you specifically clean it up? The only amendments to Sections 83 and 84 are the deletion of the word "offensive". So you did a clean-up job there. But you did not do one earlier. And then later you muddled it up again by putting in, in the new sections, the words "offensive weapons".

Mr. Scollin: Perhaps I could have again Mr. Hogarth, the subsequent sections in C-150.

Mr. Hogarth: Section 88, subsection (2), which refers to:

(2) Every one who sells, barter, gives, lends, transfers or delivers any firearm or other offensive weapon...

Now, I do not understand why you say that you were not endowed with the responsibility of cleaning up the Code, but in two sections you did, and in others you did not bother. I

[Interpretation]

ce que vous avez fait aux articles 83 et 84 qui disent maintenant «arme offensive» me semble étrange. Nous nous sommes donnés du mal pour les amender de façon à rayer le mot «offensif». Ensuite il me semble également étrange qu'à l'alinéa 2 de l'article 88 et à l'alinéa b) de l'article 98, qui sont de nouveaux articles, vous ayez rétabli «arme offensive» à nouveau. Pourquoi ne pas avoir un seul mot et partir de là?

M. Scollin: Dans l'ensemble nous avons essayé de préserver ce qui est déjà dans le Code. On voudrait toucher le moins possible à ce qui a été établi. Ce n'était pas le but ni la raison de la présente révision. Il ne s'agissait pas d'améliorer le libellé. Ici comme ailleurs le principe a été de laisser ce qui est en place et qui a fonctionné en attendant, peut-être au cours des années qui viendront, qu'on fasse une retouche générale. Je suis d'accord qu'il y a une certaine logique dans l'idée qu'il est superflu de définir deux termes «arme offensive» et «arme», quand la définition est exactement la même dans les deux cas. Mais pour demeurer conforme au principe, cet état de choses et d'autres semblables ont été laissés.

M. Hogarth: J'accepte votre déclaration de principe, mais pourquoi, lorsque vous avez amendé les articles 83 et 84, avez-vous spécifiquement apporté une correction. Les seules modifications apportées aux articles 83 et 84 sont la radiation du mot «offensif». Vous avez donc fait une révision dans ce cas-là. Mais antérieurement vous ne l'avez pas fait. Plus loin vous avez encore brouillé les choses en mettant les mots «arme offensive» dans le libellé des nouveaux articles.

M. Scollin: Peut-être, monsieur Hogarth, puis-je revoir les articles qui suivent dans le bill C-150.

M. Hogarth: L'alinéa 2) de l'article 88 qui se lit comme suit:

2) Toute personne qui vend, échange, donne, cède ou livre toute arme à feu ou autre arme offensive...

Là, je ne comprends pas pourquoi vous dites qu'on ne vous a pas confié la charge d'améliorer le Code; dans deux articles vous l'avez fait et dans d'autres vous ne vous en

[Texte]

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think we should clean it up now while we go through, rather than leave it all cluttered up.

Mr. Scollin: Yes, perhaps within these 17 sections there is a certain logic internally in being consistent. There is no particular reason really. Perhaps it was only an unintentional tidying-up in Sections 84 and 85.

The Chairman: Mr. Scollin, would it be wise to stand this clause pending further investigation?

Mr. Scollin: The whole clause?

The Chairman: Clause 2, Subclause (4).

Mr. Scollin: Respectfully, I have been trying to suggest that, in line with this principle that Clause 2, Subclause (4) stays as is with both "offensive weapon" and "weapon", within the 17 sections that have been replaced in Clause 6 a proper tidying-up operation might be done by using the word "weapon" rather than "offensive weapon", which would involve an alteration to proposed Section 88.

Mr. Hogarth: Mr. Chairman, these are somewhat trivial points. Let us just let it stand. Let the witness consider it. It is my suggestion we clean it up now, rather than wait for revision of the Criminal Code which might never come.

The Chairman: Any further comments on Clause 2 (4)?

Mr. Blair: Mr. Chairman, I do not want to intervene again on what may appear to be a question of procedure, but I really think that we have got to realize the magnitude of the suggestion made by Mr. Hogarth. The Code is voluminous in its sections, and some of my friends across the way are very expert in it. We have to recognize among other things that we in this Committee can only deal with the particular sections of the Code which are now in this Bill C-150.

If we start to tamper with basic definitions in the definitions section, we have no way of knowing, unless we go into a tremendous study, what the implications may be generally throughout the Criminal Code. And if we did make the discovery that it would be necessary to make consequential amendments in other sections of the Code which are not dealt with in the clauses before us, we would find that we would not be able to do it.

[Interprétation]

êtes pas soucie. Je crois que nous devrions l'améliorer maintenant plutôt que d'y laisser ce désordre.

M. Scollin: Il y a peut-être une certaine logique interne, dans le cadre de ces 17 articles, dans le fait qu'ils soient uniformes. Il n'y a véritablement pas de raison précise. On a peut-être amélioré sans le vouloir les articles 84 et 85.

Le président: Est-ce qu'il faudrait réserver cet article, en vue d'une étude approfondie?

M. Scollin: L'ensemble de l'article?

Le président: L'alinéa 4) de l'article 2.

M. Scollin: J'ai essayé de proposer conformément à ce principe que l'alinéa 4) de l'article 2 reste tel quel, soit avec les deux expressions «arme offensive» et «arme» alors que dans les 17 sections qui ont été remplacées dans l'article 6, une bonne amélioration pourrait être apportée en se servant du mot «arme» au lieu de «arme offensive», ce qui entraînerait une modification à l'article 88 qui est proposé.

M. Hogarth: Ce sont des questions vraiment banales. Réserveons l'article. Le témoin pourra l'étudier. Je suggère que l'on fasse cette amélioration maintenant plutôt que d'attendre une révision du Code criminel qui pourra ne jamais venir.

Le président: Avez-vous d'autres observations à faire au sujet du paragraphe (4) de l'article 2?

M. Blair: Monsieur le président, je ne veux pas m'interposer encore au sujet de ce qui pourrait sembler être une question de procédure mais je crois que nous devons considérer toute la portée de la proposition faite par M. Hogarth. Le nombre des articles du Code est considérable et certains de mes amis de l'autre côté sont des experts en la matière. Nous devons reconnaître, entre autres, que nous, à ce comité, ne pouvons traiter que des sections particulières du Code qui se trouvent dans ce bill C-150.

Et si on commence à toucher à des définitions fondamentales, dans les sections, les définitions, nous n'avons aucun moyen de savoir, à moins d'aborder une étude très approfondie, quelles seraient les incidences sur l'ensemble du Code criminel? Et si on s'apercevait qu'il fallait faire des amendements qui découlent de cela à d'autres articles du Code qui ne sont pas en cause dans les articles qui nous préoccupent, nous découvrir-

[Text]

With the greatest respect for the desire of my friends to do a perfect job on the Code at this time, I would say that we have to recognize some practical limitations. Let us deal with the matter specifically before us, and not endeavour to do the work of the Commissioners who periodically bring this Code up to date.

The Chairman: Thank you, Mr. Blair.

Mr. Hogarth: The only two sections effected are 288 and 292, armed robbery and breaking and entering, and it is quite obvious it makes no difference whether that reads "offensive weapon" or "weapon". And surely, as we go through this bill, if we propose amendments we cannot be barred merely because other sections of the Code not referred to in the bill have to be amended to coincide. That seems ridiculous. Otherwise we could not make any amendments, really.

Mr. Chappell: Mr. Chairman, I have no objection whatever if that can be cleared up with a few changes. But I point this out, that although it may be desirable to clean it up, I suggest you exercise caution that you do not do so if you are likely to weaken the jurisprudence. Certain cases are decided on certain words, and if we change unnecessarily, you sometimes weaken those cases. We would lose more than we would gain. Now, I am not suggesting it is the case, but I just draw that to the attention of those who would be drafting.

The Chairman: Shall Clause 2(4) carry?

Mr. Hogarth: I am hoping that the government will see the wisdom of coming in and making an amendment and considering these points.

The Chairman: This is what Mr. Scollin has in mind.

Mr. Hogarth: Yes, well then if we carry the clause, we cannot amend it later.

The Chairman: We can carry clause 2 (4), and the amendments that you have suggested can be made under Clause 6.

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Mr. Hogarth: No, because there are consequential amendments required to 288 and 292. I would suggest we carry it, subject to any

[Interpretation]

rions que nous ne pouvons pas le faire. Donc, avec tout le respect que j'ai pour les désirs de mes amis qui veulent faire le meilleur travail possible au sujet du Code nous devons reconnaître qu'il y a des limites d'ordre pratique. Traitons des questions qui nous sont soumises d'une façon particulière et n'essayons pas de faire le travail des commissaires qui, périodiquement, mettent à jour ce Code.

Le président: Merci monsieur Blair.

M. Hogarth: Les deux seules sections en cause, ce sont les 288 et 292, vol à main armée et effraction, et il est assez évident que cela ne fait aucune différence que ce soit «arme offensive» ou «arme» tout court. Sans aucun doute, si en étudiant ce Bill nous proposons des amendements, nous ne pouvons pas être désavoués seulement parce que d'autres articles du Code n'étant pas en cause dans le Bill doivent être modifiés pour assurer l'uniformité. Cela semble ridicule. Autrement nous ne pourrions en fait apporter aucun amendement.

M. Chappell: Je n'ai pas d'objection, si on peut régler cette question avec quelques modifications. Mais, je voudrais vous indiquer que, bien qu'il est souhaitable de faire des améliorations rédactionnelles nécessaires, je suggère que vous fassiez très attention si cela peut affaiblir la jurisprudence. Il y a certains cas qui ont été décidés sur des mots. Et si l'on change les mots sans raison on peut affaiblir ces cas, et nous allons perdre plus que nous n'allons gagner. Je ne dis pas que c'est le cas particulier, ici, mais je voudrais attirer l'attention de ceux qui veulent modifier la rédaction.

Le président: La section 4 de l'article 2 est-elle adoptée?

M. Hogarth: J'espère que le gouvernement se rendra compte qu'il est sage d'intervenir et d'apporter un amendement en examinant ces questions.

Le président: C'est ce que pense M. Scollin.

M. Hogarth: Si l'on adopte l'article, on ne peut pas l'amender par la suite.

Le président: Nous pouvons adopter la section (4) de l'article 2 et les amendements que vous avez proposés pourraient être apportés à l'article 6?

M. Hogarth: Il faudrait des amendements aux articles 288 et 292. Je propose qu'on l'adopte sous réserve de toute autre sugges-

[Texte]

further suggestions you might have to make, or any amendments that any one of us might have to propose later in the Committee hearings.

Mr. Scollin: I suggest, Mr. Hogarth, that 2(4) remain as it is so that sections other than those contained in C-150 are not affected, but that within Clause 6, the appropriate change might very well be made from "Offensive weapon" to "weapon". At least that is a partial tidying-up operation.

Mr. Hogarth: Putting it under the carpet, so to speak.

Clause 2(4) agreed to.

On Clause 6.

Mr. Woolliams: Would you give us the page?

The Chairman: It is page 5. It would be a good idea if you had a red pencil and outlined the various clauses so that you could check them more quickly.

Mr. Woolliams: I do not want to delay matters but I thought we were going to have an index, with all the sections listed under firearms. That is what I suggested to the steering committee and I thought that was what we were going to get. This really does not quite do that, but I do not want to get into an argument. Perhaps if you called the page and section it would work out all right. It would have been better if you had had all the sections on abortion, all those on homosexuality, firearms, gambling, and so on listed and under a heading. This is not very helpful.

The Chairman: This is another matter that we should take up with the steering committee.

Mr. Woolliams: But let us get on with the job.

The Chairman: We are now on Clause 6.

Mr. McCleave: Can you not call them by the section numbers, Mr. Chairman?

The Chairman: Page 5, Clause 6, referring to Section 82(1)—Definitions.

Mr. Scollin: Section 82(1) contains a number of definitions that perhaps I might go over briefly. Proposed Section 82(1) paragraph (a) contains the same definition of Commissioner as is contained in the present Criminal Code, Section 98A.

[Interprétation]

tion que vous pourriez faire ou de toute modification que vous pourriez proposer lors des audiences du Comité.

M. Scollin: Je propose, monsieur Hogarth, que le 2 (4) reste tel quel pour que cela n'affecte pas tous les autres articles du bill C-150, et qu'à l'article 6, on pourra faire une modification concernant «arme offensive» et «arme». Au moins ce sera une amélioration partielle.

M. Hogarth: En d'autres mots, vous mettez ça sous le tapis.

L'article 2 (4) est adopté.

L'article 6.

M. Woolliams: Pouvez-vous nous donner la page?

Le président: C'est à la page 5. Ce serait une bonne chose si on avait un crayon rouge pour mettre un cercle autour des articles en question. Vous pourriez ainsi les vérifier plus rapidement.

M. Woolliams: Je croyais que nous aurions un index, avec toutes les sections sur les armes à feu. C'est ce que j'ai proposé au comité directeur et je croyais que nous allions l'avoir. Cela ne donne pas le résultat escompté, mais je ne veux pas en discuter. Peut-être suffirait-il de donner les pages et les articles. Je crois que ç'aurait été une bonne chose si on avait eu tous les articles sur l'avortement, sur l'homosexualité, sur les armes à feu, sur le jeu, etc. Ce n'est pas très utile.

Le président: C'est une autre question que nous allons soulever au comité directeur.

M. Woolliams: Mais poursuivons.

Le président: Nous en sommes à l'article 6.

M. MacCleave: Est-ce qu'on ne pourrait pas nous donner le numéro de l'article du Code, monsieur le président?

Le président: C'est à la page 5, à l'article 6, qui concerne l'article 82 (1), «Définitions».

M. Scollin: L'article 82(1) contient un certain nombre de définitions que je pourrais vous énumérer rapidement: Le projet d'article 82(1), alinéa(a) contient la même définition de «commissaire» que l'article 98A du Code criminel.

[Text]

Mr. Hogarth: Mr. Chairman, I do not want to interrupt the witness on a point of order, but why not just start by asking: "Will proposed section 82(1)(a) carry? Will proposed section 82(1)(b) carry?"

The Chairman: This is what I would like to do.

Mr. Hogarth: Just go through it section by section. Then if someone wants to ask the witness an explanation of a given section, they can go ahead and ask him. I do not need an explanation on what the Commissioner of the Royal Canadian Mounted Police is.

Mr. MacEwan: I suggest you run the Committee, Mr. Chairman.

The Chairman: We are now discussing proposed Section 82(1), paragraph (a).

Mr. McQuaid: Mr. Chairman, I think we should let the witness explain each section as he goes along.

The Chairman: I think it would be helpful if we got a general explanation. However, if we go through and get an explanation on each subsection we will be here until next Christmas. So it is a matter again of degree. If the witness can explain in general terms the purport of that section I think it would be helpful.

Mr. Scollin: Since Mr. Hogarth knows who the Commissioner is, I will go on to Section 82 (1) (b)—Firearm. This is a new definition. There is no definition of "firearm" under the present code. The present definition is contained in Section 98B and is really only for the purposes of the registration provisions. This definition, which stems from a committee which the Minister mentioned, is a broad definition based on the dangerous or lethal potential of the firearm.

Mr. McQuaid: Mr. Chairman, is this section wide enough to include airguns?

Mr. Scollin: Yes, it is.

Mr. McQuaid: They are excepted, are they not, by proposed Subsection (2)?

Mr. Scollin: Not all air guns would be excepted by Subsection (2), but when we come to Subsection (2) I will mention certain ones that would.

Mr. Woolliams: It depends on the amount of wind.

The Chairman: Paragraph (c)?

[Interpretation]

M. Hogarth: Monsieur le président, je ne veux pas interrompre le témoin en appelant au Règlement, mais pourquoi ne pas demander tout d'abord: «l'article 82 (1)(a) est-il adopté? L'article 82 (1)(b) est-il adopté?»

Le président: C'est ce que j'aimerais faire.

M. Hogarth: Passons article par article. Si vous voulez demander une explication au témoin, demandez-la. Je n'ai pas besoin d'explications sur la définition du «commissaire» de la Gendarmerie royale.

M. MacEwan: Je propose que vous dirigiez le Comité, monsieur le président.

Le président: Nous discutons maintenant le projet d'article 82 (1), alinéa (a).

M. McQuaid: Monsieur le président, je pense que nous devrions permettre au témoin d'expliquer chaque article, au fur et à mesure.

Le président: Il serait utile d'avoir une explication générale. Mais si nous demandons une explication de chaque paragraphe, nous serons ici jusqu'à Noël. Si le témoin pouvait nous expliquer le but de cet article d'une façon générale, je pense que cela serait utile.

M. Scollin: Étant donné que M. Hogarth sait qui est le commissaire, je passe à l'article 82(1)(b), «arme à feu». C'est une nouvelle définition. Il n'y a pas de définition d'«arme à feu» dans le présent Code. La présente définition est contenue à l'article 98B et c'est seulement aux fins de l'enregistrement des armes à feu. Cette définition que le Ministre a mentionnée, est une définition large, fondée sur le fait qu'une arme à feu peut causer la mort.

M. McQuaid: Monsieur le président, est-ce que cet article comprend les fusils à air comprimé?

M. Scollin: Oui.

M. McQuaid: Ils ne sont pas compris dans le projet du paragraphe (2), n'est-ce pas?

M. Scollin: Pas tous, mais lorsque nous en viendrons au paragraphe (2), j'en mentionnerai certains qui le sont.

M. Woolliams: Tout dépend du vent.

Le président: Alinéa (c)?

[Texte]

Mr. MacGuigan: Mr. Chairman, I did not realize we had gone from paragraph (a) to (b). I have a question on paragraph (b). As a matter of fact I have received very substantial representations by two of my constituents, who are riflemen, Mr. Burns and Mr. Trevisan, on all these sections, and from time to time I will be raising with you some of the matters they have raised with me. They suggested that a power-actuated fastening tool such as the commercial Ramset tool could be classified as a firearm under this definition. Does Mr. Scollin have any comment on that?

Mr. Scollin: What does it discharge?

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Mr. MacGuigan: I do not know—Nails.

Mr. Scollin: Shot, bullet or other missile—I hardly think nails would be classified as missiles, in the ordinary sense. Conceivably a thing like this could be used as an offensive weapon, but so could a thousand other things. I think the meaning or spirit of the definition is reasonably clear.

The Chairman: Clause 6—Section 82(1) (c)—Local registrar of firearms.

Mr. Scollin: I think this is self-evident, and that no comment is necessary.

Mr. Hogarth: Why is the authority to issue permits split between the Royal Canadian Mounted Police and the Attorney-General. Why do we not just have one authority.

Mr. Scollin: Again, this is a system which has functioned with the highest degree of co-operation in the past and it was felt there was no justification for altering it. In certain areas policed by the RCMP, in fact, the persons who have been local registrars have been appointed by the Commissioner. The system has worked practically and without any friction, and accordingly, it was thought better to retain it.

Mr. Woolliams: I suggest that the reason it was really done is that in many of the provinces where the RCMP was administering the law they are in fact, the same people. The Attorney General gives the RCMP the power.

Mr. Scollin: This is so.

The Chairman: Are there any questions on 82(1)(d)? Are there any on (e)?

Mr. MacGuigan: Does paragraph (e) take into account the illegal act of cutting down a rifle or shotgun to a 20" barrel length, as under the previous act?

[Interprétation]

M. MacGuigan: Monsieur le président, je ne me suis pas rendu compte que nous sommes passés de l'alinéa (a) à l'alinéa (b). J'ai une question à poser sur l'alinéa (b). J'ai reçu des représentations assez substantielles de la part de deux de mes électeurs, MM. Burns et Trevisan, deux chasseurs, et ce sont des questions qu'ils m'ont signalées. Selon eux, on pourrait classer les agrafeuses, telle que la «Ramset», comme une arme à feu. Je me demande si M. Scollin a quelque chose à dire à ce sujet.

M. Scollin: Qu'est-ce qu'elles tirent?

M. MacGuigan: Je ne sais pas. Des clous.

M. Scollin: Des balles, du plomb et autres projectiles. Dans le sens ordinaire du mot, on ne pourrait considérer des clous comme étant des projectiles; on pourrait alors considérer cet outil comme étant une arme offensive de même que des milliers d'autres choses. Je pense que la définition est assez claire.

Le président: Article 6, relatif à l'article 82(1) (c), «registraire local d'armes à feu».

M. Scollin: Inutile de discuter cet article, il est suffisamment clair.

M. Hogarth: Pourquoi l'autorisation d'émettre des permis est-elle divisée entre la Gendarmerie royale et le Procureur général? Pourquoi pas une seule autorité?

M. Scollin: C'est une méthode qui a donné de bons résultats dans le passé; je ne pense pas qu'il soit nécessaire de changer cette disposition. Dans certaines régions, les registraires locaux sont désignés par le Commissaire de la Gendarmerie royale. On a pensé que c'était un bon système, et qu'il valait mieux le conserver.

M. Woolliams: Dans plusieurs des provinces où la Gendarmerie royale applique la loi, ce sont les mêmes personnes. Le procureur général donne à la Gendarmerie l'autorisation d'émettre des permis.

M. Scollin: En effet.

Le président: Avez-vous des questions à poser sur l'article 82 (1) (d)? Sur l'alinéa (e)?

M. MacGuigan: Est-ce que l'alinéa (e) tient compte de l'acte illégal de scier le canon d'une carabine pour en faire une arme de 20 pouces de long, en vertu de la loi antérieure?

[Text]

Mr. Scollin: Perhaps I should explain that paragraph (e), and, of course, the following (g) are both new. These again were based on the revision done in the early sixties by the departmental committee.

Paragraph (e) is designed to cover all those weapons which ought not to be in the possession of the public under any circumstances. At the moment, only certain ones are specified: Silencers, for example, under sub-paragraph (i); switch-knives under sub-paragraph (ii); and the intention is that a multitude of other weapons such as bazookas, sawed-off shotguns and weapons of that sort, will be classified by Order in Council under sub-paragraph (iii). Instead of appearing expressly in the legislation these weapons will now be covered by Order in Council.

The Chairman: Paragraph (f)? Paragraph (g)?

Mr. Hogarth: As I understand sub-paragraph (ii) of this proposed paragraph, the Thompson sub-machine gun is only a restricted weapon. Is that correct?

Mr. Scollin: Yes.

Mr. Hogarth: As I understand it, any person can get a registration certificate and have a Thompson sub-machine gun in his home. Is that correct?

Mr. Scollin: Under the provisions now...

Mr. Hogarth: I am not worried about the provisions under the existing law. Under our proposal in this bill any person can make an application to have a Thompson sub-machine gun, have it registered and put it in his home. Is that right?

Mr. Scollin: This is under the present law.

Mr. Hogarth: Yes, I appreciate that; and we are not changing that?

Mr. Scollin: For the first time there is a proposal in this bill that the Commissioner should have the right, in the interest of public safety, to refuse, to register.

Mr. Hogarth: Would you please take this step-by-step. I think this is an important point. As I understand it, a person may apply to the Commissioner for the registration of a sub-machine gun?

Mr. Scollin: Are you talking about the present law?

Mr. Hogarth: I am talking about what we are proposing in this bill.

[Interpretation]

M. Scollin: Je devrais vous expliquer que les alinéas (e) et (g) sont de nouvelles dispositions fondées sur une révision accomplie vers le début des années 60 par un comité ministériel. L'alinéa (e) concerne toutes ces armes qui ne doivent pas être en possession du public en aucune circonstance. Pour le moment, on n'en mentionne que quelques-unes: par exemple, un dispositif pour amortir le son, au sous-alinéa (i), les couteaux dont la lame s'ouvre automatiquement, au sous-alinéa (ii); les armes telles que les bazookas, les carabines tronquées, et des armes de ce genre, seront classifiées par arrêté ministériel, en vertu du sous-alinéa (iii). Au lieu de figurer dans la loi, ces armes seront classées en vertu d'un arrêté ministériel.

Le président: Alinéa (f)? Alinéa (g)?

M. Hogarth: Les mitraillettes Thompson, d'après le sous-alinéa (ii), sont simplement des armes à autorisation restreinte, n'est-ce pas?

M. Scollin: Oui.

M. Hogarth: Si j'ai bien compris, n'importe qui peut obtenir un permis pour se procurer une mitraillette Thompson, pour la maison, n'est-ce pas?

M. Scollin: D'après les dispositions actuelles...

M. Hogarth: Je ne parle pas de la loi telle qu'elle existe, mais d'après le nouveau bill, n'importe quelle personne peut demander un permis, faire enregistrer une mitraillette Thompson et la conserver dans sa maison, n'est-ce pas?

M. Scollin: D'après la loi actuelle.

M. Hogarth: Oui, et on ne modifie pas cela?

M. Scollin: Pour la première fois dans ce bill, une proposition est faite pour que le commissaire ait le droit de refuser, dans l'intérêt du public d'enregistrer cette arme.

M. Hogarth: C'est un point important. Toute personne peut demander au commissaire l'autorisation de se procurer et de conserver une mitraillette?

M. Scollin: Parlez-vous de la loi actuelle?

M. Hogarth: Je parle de ce qu'on propose dans le présent bill.

[Texte]

Mr. Scollin: What you are proposing I cannot clear up until we come to the point I am mentioning, namely, the discretion to refuse this.

Mr. Hogarth: I am going to come to that in my questioning. Please answer this: Under what we are proposing here a person may make an application to have a sub-machine gun in his home—a dwelling house?

Mr. Scollin: Yes.

Mr. Hogarth: Or in his place of business?

Mr. Scollin: Yes.

Mr. Hogarth: And we have extended the definition of “dwelling house” to include campers and mobile homes. Is that right?

Mr. Scollin: Yes, sir.

Mr. Hogarth: As I understand it, the only basis apparently upon which a registration may be refused by a local registrar of firearms or the Commissioner arises, for the local registrar of firearms and the Commissioner, in Section 98, paragraph (3) where it says:

(3) Where a local registrar of firearms has notice of any matter that may render it desirable in the interests of the safety of other persons that the applicant should not possess a restricted weapon, he shall report that matter to the Commissioner.

So, the only basis upon which the registration of a restricted weapon can be refused is when he has had some notice that the applicant should not possess it. Is that correct?

Mr. Scollin: Yes.

Mr. Hogarth: I would take it, then, that if an ordinary citizen who was not known to the Commissioner at all, or to the local registrar, presented himself, got the permit to carry, came in with a submachine gun and the local registrar had no notice of any matter about the applicant, he would have to give him a permit. Is that right?

Mr. Scollin: I think, first of all, it must be evident that some enquiry would be made by the local registrar including such things as the custody of the firearm and the location of the premises. There are various matters that you could enquire about before deciding whether or not to forward this application to the RCMP and if, as a result of this enquiry, matters come to his attention to suggest that this would not be a proper case for registra-

[Interprétation]

M. Scollin: Sur ce qu'on propose, je ne peux vous donner de réponse définitive avant d'en arriver au point que je mentionne, soit la possibilité de refuser.

M. Hogarth: C'est ce à quoi je veux en venir. Veuillez répondre à ceci: d'après la nouvelle proposition, une personne peut faire une demande pour avoir une mitrailleuse dans sa maison?

M. Scollin: Oui.

M. Hogarth: Ou dans sa maison d'affaires?

M. Scollin: Oui.

M. Hogarth: Et nous avons étendu la définition d'habitation pour inclure les chalets et les roulottes, n'est-ce pas?

M. Scollin: Oui.

M. Hogarth: Si je comprends bien, la seule raison sur laquelle on se base pour refuser l'enregistrement d'une arme à feu réside, pour le registraire local comme pour le commissaire, dans le texte du paragraphe (3) de l'article 98 qui dit:

Lorsqu'un registraire local d'armes à feu a connaissance de quelque matière qui peut rendre souhaitable, pour la sécurité d'autrui, que l'auteur de la demande ne soit pas en possession d'une arme à autorisation restreinte, il doit faire rapport de cette matière au commissaire.

La seule règle d'après laquelle le commissaire peut refuser l'autorisation d'enregistrer une arme à autorisation restreinte repose sur le fait qu'on lui a signalé que l'auteur de la demande ne devrait pas posséder une telle arme. Exact?

M. Scollin: Exact.

M. Hogarth: Par conséquent, si j'ai bien compris, lorsqu'une personne ordinaire, qui n'est pas connue du registraire, se présente pour demander un permis et si le registraire n'a pas reçu d'avis au sujet de l'auteur de la demande, il serait tenu de délivrer ce permis. Ai-je raison?

M. Scollin: Tout d'abord, il doit être clair que le registraire local va faire une enquête. Il va s'informer où cette arme sera conservée. Il y a beaucoup de questions qu'il pourra poser avant d'acheminer cette demande jusqu'à la Gendarmerie. Si, au cours de l'enquête, il apprend certains détails qui lui laissent croire que l'arme ne devrait pas être enregistrée, il en avertira le commissaire.

[Text]

tion, then he will report that to the Commissioner.

Mr. Hogarth: Yes. In the meantime the man keeps the Thompson submachine gun in his possession.

Mr. Scollin: No, he does not.

Mr. Hogarth: What happens to it?

Mr. Scollin: He has to get a permit to convey this from the place where he bought it to the registrar for examination.

Mr. Hogarth: Yes, and where does it provide that the registrar keeps it?

Mr. Scollin: The chap himself cannot keep it, otherwise he commits an offence.

Mr. Hogarth: I see. Is it your suggestion that no persons who have restricted weapons can, in this interim period, keep them in their possession?

Mr. Scollin: That is right, because they are not registered.

Mr. Hogarth: I see. He has to take it back from where he got it? Is that correct?

Mr. Scollin: Well, leave it with the police.

Mr. Hogarth: I see. So then they issue this permit to him, having had no notice?

Mr. Scollin: It is not a permit. It is a question of registration.

Mr. Hogarth: In the first place he gets the permit to keep it until the Commissioner gives him a registration certificate?

Mr. Scollin: He gets a permit which authorizes him to convey it from the place where he is buying it to the place where registration applications are made.

Mr. Hogarth: And there he leaves it? Is that correct?

Mr. Scollin: There he leaves it.

Mr. Hogarth: I see. Then the Commissioner subsequently determines whether he should get it registered or not?

Mr. Scollin: Yes under Section 98, paragraph (4).

Mr. Hogarth: Right. Mr. Chairman, it is my respectful opinion that under no circumstances, even as detailed by this witness,

[Interpretation]

M. Hogarth: Et, en attendant, la personne a le droit de conserver cette mitraillette en sa possession?

M. Scollin: Pas du tout.

M. Hogarth: Qu'est-ce qui arrive?

M. Scollin: L'acheteur doit se munir d'un permis pour transporter l'arme depuis l'endroit où il l'a achetée jusque chez le registraire.

M. Hogarth: Très bien, mais où est-il dit que le registraire prend possession de l'arme?

M. Scollin: L'acheteur ne peut la garder en sa possession sans commettre une offense.

M. Hogarth: Je vois. Alors vous affirmez que personne ne peut conserver une arme à autorisation restreinte pendant cette période intérimaire?

M. Scollin: C'est exact, parce que l'arme n'est pas enregistrée.

M. Hogarth: Je vois. Doit-il la retourner là où il l'a achetée?

M. Scollin: Il peut la laisser entre les mains de la police.

M. Hogarth: Je vois. Donc, ils lui accorderont le permis s'ils ne reçoivent aucun avis leur disant de ne pas le faire.

M. Scollin: Ce n'est pas un permis. Il s'agit d'un enregistrement.

M. Hogarth: Il reçoit d'abord un permis qui l'autorise à garder l'arme jusqu'à ce que le commissaire lui décerne un certificat d'enregistrement?

M. Scollin: Il obtient un permis pour transporter l'arme de l'endroit où il l'a achetée jusqu'à l'endroit où il doit faire sa demande d'enregistrement.

M. Hogarth: Et il la laisse là, n'est-ce pas?

M. Scollin: Il la laisse là.

M. Hogarth: Très bien. Le commissaire détermine, par la suite, si elle doit être enregistrée ou non?

M. Scollin: Oui, conformément aux dispositions du paragraphe (4) de l'article 98.

M. Hogarth: Je pense, en toute déférence, qu'en aucune circonstance, malgré les explications détaillées du témoin, aucun contri-

[Texte]

should any citizen be permitted to have in his possession a machine gun of any kind. I think that it is a grave injustice to the people of Canada to permit anybody under any circumstances to have one of these weapons in the home or place of business. Those weapons should be prohibited. I cannot understand the rationale as to why they would not be. They are lethal, they are the most extremely dangerous guns there are, and I think that they should be in the prohibited section. I cannot see any rationale why they should not.

The Chairman: Are there any further comments on this section? Mr. Murphy.

Mr. Murphy: I agree wholeheartedly with what Mr. Hogarth has said. I cannot see any reason why any type of fully automatic weapon, which would include a machine gun, should have its place anywhere outside of the armed forces or the police forces.

An hon. Member: Mr. Hogarth are you including...

The Chairman: Just a moment, order please.

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An hon. Member: ...gun collections and...

Mr. Woolliams: I think you gentlemen have raised a very important point. Perhaps the witness now would say why they are not prohibited. What was the thought behind it?

Mr. Scollin: I do not know that there was any intention here to vary what is presently the position under the Criminal Code and, in fact, although on the face of them these are very, very naughty weapons to have, the concealable automatic hand gun is in many ways much more of a public menace, because one can very well imagine the difficulty of the chap who is going to commit an armed robbery lugging a Sten gun down the street or an old World War I machine gun. The likelihood of detection is certainly much stronger there than in the case of the chap who has got an automatic in his pocket.

Mr. Hogarth: They did not detect Marcotte. He shot two policemen in Montreal with a machine gun.

The Chairman: Gentlemen, there seems to be some divergence of opinion on section 82 (1) (g). I would suggest that we call and pass Clause 6, Sections 82 (1) (a), (b), (c), (d), (e), (f), and stand (g).

Mr. Christie: Mr. Chairman, I do not think you will want to pass (e) because I think the

[Interprétation]

buable ne devrait avoir en sa possession une mitraillette de quelque sorte que ce soit. Je pense que c'est une grave injustice envers la population du Canada que de permettre à quiconque, quelles que soient les circonstances, de conserver ces armes chez lui ou à sa place d'affaires. Elles devraient être prohibées. Je ne comprends pas la raison pour laquelle elles ne devraient pas l'être. Ce sont les armes les plus dangereuses et je crois qu'elles devraient être prohibées. Je ne vois pas pourquoi elles ne le seraient pas.

Le président: Y a-t-il d'autres commentaires sur cet article? Monsieur Murphy?

M. Murphy: Je suis tout à fait d'accord avec ce que M. Hogarth vient de dire. Je ne vois nullement pourquoi l'autorisation de posséder une arme complètement automatique devrait être donnée à des personnes autres que les membres des forces armées ou des corps policiers.

Une voix: Est-ce que vous incluez, monsieur Hogarth...

Le président: A l'ordre, s'il vous plaît.

Une voix: ...les collections et...

M. Woolliams: Je pense qu'on a soulevé un point très important. Le témoin pourrait peut-être nous dire pourquoi elles n'ont pas été prohibées?

M. Scollin: Il n'était nullement question de modifier les dispositions actuelles du Code criminel même si ces armes sont très dangereuses. Le revolver automatique est, en un certain sens, beaucoup plus dangereux, parce qu'on peut difficilement imaginer un bandit, qui se prépare à commettre un vol à main armée, se promener dans la rue une mitraillette sous le bras. Il risque d'être remarqué plus facilement que celui qui cache son revolver automatique dans sa poche.

M. Hogarth: Personne n'a remarqué Marcotte et, pourtant, il a tué deux policiers, à Montréal, à l'aide d'une mitraillette.

Le président: Il semble y avoir divergence d'opinions au sujet de l'alinéa g) du paragraphe (1) de l'article 82. Je propose que nous adoptions les alinéas a), b), c), d), e), f), et que nous réservions l'alinéa g).

M. Christie: Je ne crois pas, monsieur le président, que nous puissions adopter l'alinéa

[Text]

suggestion that Mr. Hogarth is making is to move fully automatic weapons from (g) to (e).

The Chairman: Mr. Scollin would like to know if it is all fully automatic weapons you are referring to?

Mr. Hogarth: My problem is, Mr. Chairman, that I wanted to get the evidence of the witness before I moved an amendment. I think it should apply to all fully automatic weapons.

Mr. Scollin: That they should be prohibited?

Mr. Hogarth: That they should be prohibited weapons. I cannot see any justification for their possession.

Mr. Woolliams: In effect, would anything turn on this? Is there any reason why they should not be prohibited?

Mr. Christie: I understand there is a judge in your province who has got quite a gun collection and it includes fully automatic weapons.

Mr. Scollin: Yes, one of your judges has a very valuable collection, I think, of automatic weapons in his basement.

The Chairman: Gentlemen, I think this is a valid divergence of opinion, and perhaps it would be better to stand Clause 6, Section 82, paragraphs (e) and (g). Mr. Scollin, please.

Mr. Scollin: One point I might just add on that is the effect that this would have on the possession of weapons by a great number of law-abiding citizens who do, in fact, at the present time and have, under the present Code, accumulated a pretty considerable and sometimes, in terms of these things, a pretty valuable collection of these weapons which would now become completely disposable and, I take it, without any compensation.

Mr. Murphy: I would like to ask the witness, Mr. Chairman, if you are going to try to protect this type of individual? Are you not leaving it open for all individuals to have this type of weapon? Even if they are kept lawfully, as is possibly the case with the judge in Alberta, they are subject to theft and might get into the hands of any number of people. Is that not true?

Mr. Scollin: This is true.

Mr. Murphy: Would not these people be able to dispose of these weapons to the police

[Interpretation]

e) puisque monsieur Hogarth suggère que les armes complètement automatiques soient incluses à l'alinéa e) au lieu de l'alinéa g).

Le président: Monsieur Scollin aimerait savoir si vous parlez de toutes les armes complètement automatiques?

M. Hogarth: Je voulais entendre la déposition du témoin, monsieur le président, avant de proposer un amendement. Je pense que cela doit s'appliquer à toutes les armes à feu complètement automatiques.

M. Scollin: Qu'elles soient prohibées?

M. Hogarth: Qu'elles soient déclarées armes prohibées. Je ne vois pourquoi on permettrait à quiconque de posséder de telles armes.

M. Woolliams: Est-ce qu'il y a des raisons pour lesquelles elles ne devraient pas être prohibées?

M. Christie: Je crois savoir qu'un juge de votre province possède une imposante collection d'armes à feu et qu'on y retrouve des armes complètement automatiques.

M. Scollin: En effet, un juge possède une collection très imposante d'armes à feu dans le sous-sol de sa maison.

Le président: Messieurs, je pense que cette divergence d'opinion est valable et que nous devrions réserver les alinéas e) et g) du paragraphe (1) de l'article 82 du Code dont il est question à l'article 6 de ce bill. Monsieur Scollin.

M. Scollin: Je voudrais ajouter ceci. Je pense à l'effet que cela aurait sur les personnes qui ont accumulé des collections d'armes dispendieuses. Ces personnes devraient se débarrasser de ces armes et ne pourraient recevoir aucune compensation.

M. Murphy: Je voudrais demander au témoin, monsieur le président, si, en protégeant ces personnes, on ne protège pas également tous les individus qui désirent se procurer de telles armes? Ces armes, comme celles qui composent la collection du juge de l'Alberta, peuvent tomber entre les mains de voleurs, n'est-ce pas?

M. Scollin: Vous avez raison.

M. Murphy: Est-ce que ces personnes ne pourraient pas vendre ces armes à la police

[Texte]

or to the armed forces, to people who might have some legal use for them?

Mr. Scollin: You are in as good a position to speculate on that as I am. I have no idea even what number is involved.

Mr. Woolliams: Mr. Chairman, do you think we should probably ask the Minister? I am inclined to go along with Mr. Hogarth and the other members as far as this point in concerned, but there is that one thought that

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they have raised. There are some people who really have a real, legitimate hobby of gun collection and they may have some historic value to these people and to the country and it would mean this would be totally prohibited. I do not know whether that means they would have to be destroyed or where they would go, expect to the registrar, and what would he do with them?

The Chairman: Would the Committee agree with passing under Clause 6, Section 82 (1) (a), (b), (c), (d) and (f), and stand (e) and (g)?

Clause 6, proposed Section 82 (1) (a), (b), (c), (d) and (f) agreed to.

Mr. McQuaid: Mr. Chairman, I wonder if I could ask the witness just one question? I may be wrong on this, but as I recall it, in Bill C-195, you had as a prohibited weapon a shotgun the barrel of which exceeded, I believe, 20 inches: is that right? Why was that taken out?

Mr. Scollin: It was felt that particularly in northern areas the weapon which is now described in paragraph (g), subparagraph (iii), that is, a weapon that can be fired when it is less than 26 inches, is a useful and, perhaps, even sometimes a necessary survival weapon out in the bush. Accordingly, it was felt that the same treatment might be accorded to this as is accorded to a handgun; that is, that it should fall within the registration and permit provisions giving some control over both its possession in the home or the dwelling house and, because of the permit provisions, its use outside the dwelling house or place of business.

Mr. McQuaid: It is a pretty dangerous weapon, though.

Mr. Scollin: So are they all, but it is felt that with these controls, that is, the permit requirements, the registration requirements that adequate control could be exercised at

[Interprétation]

ou aux forces armées, à des personnes qui pourraient s'en servir légalement?

M. Scollin: Vous pouvez répondre à cette question aussi bien que moi. J'ignore complètement ce que peuvent contenir ces collections.

M. Woolliams: Ne croyez-vous pas, monsieur le président, que nous pourrions demander au ministre? Je suis porté à appuyer monsieur Hogarth et les autres membres qui veulent que ces armes soient prohibées, mais

il y a également ce problème qu'on vient de soulever. Il y a des gens qui ont un hobby vraiment légitime de collectionner les armes et qui ont des pièces de valeur historique pour eux et pour le pays et ceci voudrait dire que la collection serait entièrement défendue. Je ne sais pas si cela veut dire que ces choses seraient détruites ou rendues au registraire, et qu'est-ce qu'il en ferait?

Le président: Êtes-vous d'accord pour que l'on adopte la clause 6, article 82 (1), a), b), c), d) et f), et que l'on réserve e) et g)?

M. McQuaid: Monsieur le président, puis-je poser une question au témoin? C'est peut-être erroné, mais si je me souviens bien, dans le bill C-195, vous aviez comme arme prohibée un fusil de chasse dont le canon est de plus de 20 pouces; est-ce vrai? Pourquoi l'a-t-on supprimée?

M. Scollin: On a pensé que dans les régions du nord, l'arme décrite dans l'alinéa g), sous-alinéa (iii), c'est-à-dire toute arme à feu qui mesure moins de vingt-six pouces est utile et souvent considérée comme moyen de survie dans les forêts. Et par conséquent, on a pensé qu'on pourrait considérer cette arme comme une arme à feu portative, c'est-à-dire que l'on pourrait exercer un certain contrôle sur les personnes qui possèdent ces armes, qui les conservent dans leur maison ou à leur lieu de commerce.

M. McQuaid: C'est une arme assez dangereuse, n'est-ce pas?

M. Scollin: Elles le sont toutes. Mais on a pensé qu'avec ce genre de contrôle, c'est-à-dire l'enregistrement et le permis, que l'on pourrait exercer un contrôle suffisant et en

[Text]

the same time leaving prospectors and the like open to being able to use this weapon, if necessary, in the bush.

Mr. Chappell: Mr. Chairman might I ask a question? It strikes me there was quite a lot of correspondence about these weapon collections. I understand there are some that are worth up in the thousands of dollars, and to change them to subparagraph (e) we would, in fact, be taking them without compensation. Could this be covered by tighter licensing of them?

Here is my question: it would seem to me, and I wonder what your thought is, it would make no difference, perhaps, if the licensing was tighter because they could be stolen just the same as if the man had them in his basement on display. Is there anything that we can do short of taking these for that security?

Mr. Scollin: I think your point is generally valid, that it is just as easy to steal a weapon that has been registered and carries permits with it as a weapon which has not. It is just as easy to steal a machine gun from a basement whether it has been registered or not.

Mr. Chappell: May I follow with another question? Do we have any evidence from the police that these, collectors' items have been getting into the wrong hands?

Mr. Scollin: No, I know of no cases where offences have been committed by the use of collectors' items, although it may very well be that cases like this have occurred and just have not been particularly reported as that.

Mr. Chappell: May I ask a third question? It is possible to go at it by rendering these weapons impotent by removing some part?

Mr. Scollin: If a barrel is plugged up or the breach taken away, I suppose some question arises as to whether it is even a firearm anymore. If it is easy enough to plug the barrel up, then presumably it is not too difficult to unplug it, so that the operations to render it useless can be reversed.

Mr. D. H. Christie (Assistant Deputy Attorney General): I might add that these gun provisions were prepared in very close consultation with the RCMP. There was also a meeting between the Minister and the Canadian Association of Chiefs of Police, at which these gun provisions were reviewed only about four weeks ago.

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Mr. Hogarth: Was this point specifically drawn to their attention?

[Interpretation]

même temps, permettre aux prospecteurs de se servir de ces armes dans la forêt.

M. Chappell: Monsieur le président, puis-je poser une question? Je pense qu'on a reçu beaucoup de correspondance au sujet de ces collections d'armes. Si j'ai bien compris, il y en a qui ont une valeur de quelques milliers de dollars et en les plaçant dans le sous-alinéa e) on les confisquerait en fait sans aucune indemnisation. Ne pourrait-on pas donner des permis aux collectionneurs?

Voici ma question: il me semble que si on imposait des restrictions plus sévères, ça ne ferait pas de différence, parce que ces armes pourraient être volées quand même. Est-ce que nous pouvons faire quelque chose à l'exception de confisquer ces armes pour assurer une certaine sécurité?

M. Scollin: Votre point de vue est valide. Il est aussi facile de voler une arme enregistrée, pour laquelle on a un permis qu'une arme pour laquelle on n'a pas de permis. Il est tout aussi facile de voler une mitraillette dans un sous-sol, qu'elle ait été enregistrée ou non.

M. Chappell: Une autre question, s.v.p.? Est-ce que la police nous a donné des preuves que ces fusils qui font partie des collections sont tombés dans des mains de criminels?

M. Scollin: Il y a peut-être certains cas, mais on ne les a pas signalés. Il est fort possible que des cas de cette nature se soient produits et n'ont pas été le sujet de rapports particuliers.

M. Chappell: Troisième question. Est-ce qu'on pourrait rendre ces armes inutiles en enlevant certaines pièces?

M. Scollin: Oui, si on bouche le canon ou si on enlève l'aiguille, et je suppose que ce n'est plus une arme à feu. S'il est facile de boucher le canon, il est aussi facile de le déboucher. Et par conséquent, le règlement serait inutile.

M. D. H. Christie (Sous-procureur général adjoint): Au sujet de ces dispositions au sujet des armes à feu, on a consulté la Gendarmerie et aussi l'Association canadienne des chefs de police, et on a passé ces dispositions en revue il y a environ 4 semaines. On a étudié la question à fond.

M. Hogarth: Est-ce qu'on a attiré leur attention sur ce point?

[Texte]

Mr. Christie: Which point?

Mr. Hogarth: The point that the sub-machine gun could be lawfully possessed?

Mr. Christie: Oh, I think they must have realized that.

Mr. Hogarth: Can you recall if it was...

Mr. Christie: We did not discuss that point, but they had gone over the Bill clause by clause on these gun provisions.

Mr. Hogarth: I am sorry, this is one of Mr. McMorran's chief objections and we have had some extremely difficult situations in Vancouver, as you know, with respect to possession of firearms. I know they do not come under this particular point, but I am sure that his observations are very valid when he says—and I am voicing his opinion as well as my own—that we should ensure these weapons cannot possibly get into hands for unlawful use.

Mr. Schumacher: Gentlemen. Has there been any knowledge obtained by the Department of cases of armed robbery where, in fact, these automatic weapons have been stolen from the Department of National Defence? I understand that a great number of these weapons used in those types of offences have come from that source, and not really from collectors. Of course any amendment here would not change the result, if that is the case.

Mr. Scollin: I really have no evidence of that. One of the points you have to bear in mind is that, the enforcement of the Code being under the provincial jurisdiction, a case arises and is disposed of, say, in Moose Jaw or in Winnipeg, and the details of such cases do not normally get much in the way of publicity, if any at all, and the source of the firearms used in these offences is something we just really cannot tell over-all.

Mr. Schumacher: Mr. Chairman, in view of that answer I do not think it would be wise for us at this time to move this class of weapon into the prohibited range without the facts to base it on, because if these collector's items are not being used for the purpose that the Bill is aimed at, then I think we should not be interfering with what could be quite valuable property rights.

The Chairman: Well, this is the decision I thought the Committee had taken, that we stand paragraphs (e) and (g) of the proposed Section 82(1), and then we will come back and perhaps by that time we will have fur-

[Interprétation]

M. Christie: Quel point?

M. Hogarth: Sur le point que la mitrailleuse pourrait être en possession de personnes ayant un permis?

M. Christie: Je suis sûr qu'ils ont réalisé cela.

M. Hogarth: Vous souvenez-vous si...

M. Christie: Nous n'avons pas discuté ce point, mais ils ont étudié le bill article par article quant à ces dispositions.

M. Hogarth: C'est une des objections principales de M. McMorran. Nous avons une situation très difficile à Vancouver en ce qui concerne la possession des armes à feu. Je sais que cela ne s'applique pas à ce point en particulier, mais ses observations sont très valables, et j'exprime son opinion aussi bien que la mienne, qu'on doit prendre des dispositions pour que ces armes à feu ne tombent pas entre les mains des criminels ou d'une personne ayant des intentions criminelles.

M. Schumacher: Messieurs, le ministère connaît-il des instances où il y a eu des cambriolages où l'on s'est servi d'armes à feu qui avaient été volées du ministère de la Défense nationale? Je pense que souvent ces armes viennent de cette source et non pas des collections. Et si tel est le cas, toute modification à la loi n'aurait pas d'effet.

M. Scollin: Je n'ai aucune preuve là-dessus. Un autre point qu'il ne faut pas oublier, c'est que souvent l'application du Code tombe sous la juridiction de la province, un cas se présente et est réglé, disons, à Moose Jaw ou à Winnipeg et les détails d'un tel cas ne reçoivent pas normalement beaucoup de publicité, ou peut-être pas, et la source de ces armes à feu est une chose que nous ne pouvons pas discerner.

M. Schumacher: Monsieur le président, je ne pense pas qu'il serait bon pour nous, en ce moment, de placer ces armes dans la catégorie des armes à feu prohibées sans raison, parce que si ces articles des collecteurs ne sont pas employés aux fins visées par le présent bill, je crois qu'alors nous toucherions à des droits de propriété très précieux.

Le président: Eh bien, je croyais que c'était la décision du Comité de réserver les alinéas e) et g) de l'article 82(1). Nous allons obtenir d'autres renseignements et nous allons continuer cet article plus tard.

[Text]

ther information and can make a proper decision.

I would like to call the proposed new Section 82(2) at the top of page 7.

Mr. Deakon: Mr. Chairman, in reference to this proposed new Section 82, Subsection (2), I would like to ask the witnesses a question. Something that bothers me here is the vagueness, I submit, in the phrase, "where it is proved" close to the middle of that particular subsection. I submit that this is vague in this regard, that it does not say by whom it is to be proved, how it is to be proved or where it is to be proved.

Mr. Scollin: Firstly, in the absence of any proof that would bring the weapon within Subsection (2), then it would constitute a firearm. The idea is that this would be a matter where if a charge were laid, for example, alleging that the firearm was a restricted weapon, or a prohibited weapon, that the burden of showing this would be on the possessor of the weapon. It would be a matter peculiarly within his knowledge precisely what capacity his weapon had. Otherwise, every time a charge were laid, for example, relating to a restricted weapon, or relating to a prohibited weapon, it would be essential for the Crown to call an expert who had tested the thing ballistically.

This relates mainly to the kind of relatively low velocity airgun, gas-operated gun, and the manufacturer's specifications set out pretty clearly the muzzle velocity of these weapons so that a chap who buys the ordinary airgun—things like the Cros-man Arms—has a statement that the muzzle velocity is 300, 350 feet per second. Therefore, he is in a position to know what the muzzle velocity is, and if he contends that the weapon is not a restricted weapon within the meaning of the definition, then it is up to him to show this.

Mr. Deakon: In other words, the onus on the person that is accused as the possessor.

Mr. Scollin: Yes, the possessor of the weapon.

Clause 6, proposed new Section 82 (2) agreed to.

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Clause 6, proposed Section 83 agreed to.

On Clause 6, proposed new Section 84—While attending public meeting.

Mr. MacGuigan: Mr. Chairman, Section 84 and the following section raise what I consid-

[Interpretation]

Maintenant, nous passons au nouvel article 82 (2), au haut de la page 7. Monsieur Deakon.

M. Deakon: Monsieur le président, au sujet du nouvel article 82 paragraphe (2), j'ai une question à poser aux témoins. Je trouve qu'il y a une phrase assez vague, et je cite: ... «lorsqu'il est démontré» vers le milieu de ce sous-alinéa. Cette phrase ne dit pas sur qui retombe le fardeau de la preuve, comment la preuve sera faite ou à quel endroit cette preuve doit être faite.

M. Scollin: D'abord, en l'absence de toute preuve qui placerait l'arme sous le paragraphe (2), on considérera que cette arme à feu est une arme à feu restreinte. Le fardeau de la preuve revient au détenteur de l'arme à feu. C'est à lui de prouver la propriété de son arme à feu. Chaque fois qu'on porterait une charge au sujet d'une arme restreinte ou prohibée, la Couronne devrait faire venir un expert pour faire une épreuve balistique.

Il s'agit ici des spécifications assez claires au sujet de la vitesse de ces armes. Et par conséquent, ceux qui achètent ces armes ont aussi en mains un certificat de vitesse; et par conséquent, la personne sait quelle est la vitesse de l'arme. Et s'il prétend que cette arme-là n'est pas une arme d'après l'esprit de la définition, c'est à lui de le prouver.

M. Deakon: Par conséquent, le fardeau de la preuve retombe sur le détenteur de l'arme.

M. Scollin: Oui, le détenteur de l'arme.

L'article 6 proposé 82 (2) est adopté.

L'article 6 proposé paragraphe 83 est adopté.

A l'article 6, nouvel article 84 proposé—Assiste ou se rend à une assemblée publique.

M. MacGuigan: Monsieur le président, l'article 84 et l'article suivant posent un pro-

[Texte]

er to be a fairly serious problem because of the fact that there is no intent required for conviction under the section, combined with the breadth of the definition of "weapon" as set out in Clause 2, Subclause (4).

The problem arises, admittedly, only when some act against the public good has been committed—only when a person who carries something which might be held to be a weapon actually does something with it. For example, if he pokes a nail file into somebody at a public meeting he might be convicted not only of assault but also of an offence under Section 84 because he has used something as a weapon even though it is not something that could normally be considered to be that. I am very concerned about the absence of the requirement of intent in Section 84.

In Section 83 there is an intent:

...for a purpose dangerous to the public peace...

In Section 84 there is no intent. He merely has to be carrying something which he later uses in an offensive way and he is guilty of this offence. I submit that this is not good criminal jurisprudence.

Mr. Deakon: He does not have to use it; he has it in his possession.

Mr. MacGuigan: Yes, that is true of Section 84; but it is a weapon in this extended sense only if he does use it. It would only be in the limited case where he used it that this problem would arise, and then he has, in effect, been put in double-jeopardy, as I see it.

Mr. Scollin: Quite properly, perhaps, if a train goes to a public meeting with something which may be used as a weapon and does in fact use it as a weapon the chances are he would be charged with assault anyway; but there he would seem to fall within the evil struck at by the section, and if he is attending a public meeting and he has something that you now know is a offensive weapon because he has used it, perhaps he should properly be convicted under Section 84.

This just follows the present provision of the Criminal Code in Section 87, and that has been there for quite a long time. I think the courts have applied a wealth of common sense in not construing this in such a way as to create an unfair or unreasonable result in any case that I have known of.

Mr. MacGuigan: As I understand your submission, Mr. Scollin, it is that the excessive power is not dangerous because it has not been used. But in my opinion that is not a good principle in criminal law.

[Interprétation]

blème que je considère comme important étant donné qu'il n'y a pas d'intention requise, pour la condamnation dans le cadre de la définition «armes» qui figure à l'article 2, section 4. Un problème se pose admettons-le, lorsqu'il y a un acte commis contre le bien public, quand quelqu'un commet un acte délictueux avec quelque chose qui peut être considéré comme une arme ou devient menaçant.

Si quelqu'un plante une lime à ongles dans le dos de quelqu'un lors d'une assemblée publique, il peut être condamné non seulement pour assaut, mais aussi en vertu de la section 84 parce qu'il s'est servi de quelque chose qui n'est pas une arme, mais qui a été utilisée comme une arme. Je me préoccupe beaucoup de ne pas voir figurer la notion d'intention dans l'article 84. A l'article 83, il y a là une intention, on dit

...dans un dessein dangereux pour la paix publique...

Il suffit qu'il transporte quelque chose qu'il puisse utiliser comme arme offensive par la suite. Et, je pense que ce n'est pas une bonne jurisprudence criminelle.

M. Deakon: Il n'a pas à l'utiliser, il est en possession de cet objet.

M. MacGuigan: Oui, c'est exact pour l'article 84, c'est une arme uniquement s'il s'en sert comme telle. C'est donc un cas limité au moment où la personne se sert de cet objet comme une arme. Et alors il devient doublement coupable, tel que je le conçois.

M. Scollin: Si quelqu'un se rend à une assemblée publique avec quelque chose qui peut être utilisée comme une arme, et qui, en fait, s'en sert comme une arme, il y a des chances qu'il soit de toute façon accusé d'assaut. Tandis que s'il est en possession de quelque chose dont il peut se servir comme arme, et qu'en fait, il s'en est servi, il peut être condamné en vertu de l'article 84. Ceci suit les dispositions actuelles du code, à l'article 87 et cela depuis longtemps. Les tribunaux ont fait preuve de bon sens dans l'application de ces dispositions.

M. MacGuigan: Si je comprends ce que vous dites, M. Scollin, c'est que l'excès de puissance n'est pas dangereux parce qu'il n'a pas été utilisé. A mon avis, ce n'est pas un bon principe en droit criminel. Peut-être que,

[Text]

Perhaps, as a public servant, you do not attend the more raucous public political meetings at which passions may easily rise. It is quite conceivable that somebody would attend a political meeting, or any other kind of meeting, which might arouse his worse instincts. With no intent to do damage to somebody else he might become aroused and use something in his possession which was otherwise comparatively harmless, such as a nail file, or an ordinary pocket knife, or an old vegetable, perhaps.

The Chairman: Mr. Chappell?

Mr. Chappell: Mr. Chairman, I agree with the section as it stands. It strikes me that the person takes a butcher knife to a public meeting is no different from one who takes a letter-opener intending to use it for the same purpose, or if he uses it. If he uses a letter opener or a nail file I can see no difference. If as a result of his imagination, he uses some weapon that is not ordinarily considered a weapon I do not think he should be allowed to escape. He should receive the same treatment as of the person who took a knife.

The Chairman: Mr. Murphy, please?

Mr. Murphy: Mr. Chairman, if I may follow upon what Mr. MacGuigan said, he mentioned the double-jeopardy principle. I can foresee a situation in which a person could render himself liable to prosecution under this section without having actually committed an offence at a public meeting. This is the case of a man going there with, let us say, a pocket knife in his pocket, attending the meeting and, through no fault of his own, perhaps find himself in a situation in which he would have a perfect excuse to use the knife in self-defence—be guilty of no offence by using the knife—but under this section he would be guilty because of the simple fact that he did use it, and even though the law

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would provide him with a defence of self-defence under the circumstances of the particular case.

The Chairman: Are there any further comments? Mr. Ouellet?

Mr. Ouellet: Mr. Chairman, I have just one question. Perhaps you could help me on this. I have this in my pocket. Would you consider it a weapon? I start playing with this on the table and I get into an argument with my friend, Mr. Woolliams.

Mr. McCleave: Do not miss! I am right alongside!

[Interpretation]

en tant que fonctionnaire, vous ne participez pas à des réunions politiques où des passions peuvent s'enflammer facilement. Il est aisément concevable que quelqu'un peut assister à une réunion politique, ou à toute autre sorte de réunion, qui peut réveiller ses plus bas instincts. Sans avoir l'intention de faire du mal, il devient excité et peut utiliser un objet qu'il a sur lui et qui normalement, n'est pas une arme offensive, comme une lime à ongles ou un canif, ou même un vieux légume.

Le président: Monsieur Chappell.

M. Chappell: J'approuve l'article tel qu'il est conçu. Si quelqu'un amène un couteau de boucher ou quelque chose d'autre à une réunion publique et qu'il s'en sert. S'il se sert d'un coupe-papier ou d'une lime à ongles, s'il se sert d'une arme qui n'est pas normalement considérée comme telle, alors, je crois qu'il ne devrait pas avoir une chance d'échapper à la justice. Il devrait être traité de la même façon que la personne munie d'un couteau.

Le président: M. Murphy.

M. Murphy: Pour suivre ce que M. MacGuigan a dit—il citait l'exemple du double risque—je peux envisager une situation dans laquelle une personne pourrait se rendre coupable de poursuites d'après cet article, sans avoir commis un délit lors d'une réunion publique. Disons qu'un homme a un couteau dans sa poche, il va à une réunion et, pour une raison qui ne dépend pas de lui, il aurait une excuse parfaitement valable pour utiliser ce couteau en tant que légitime défense. Mais en vertu de cet article, il serait coupable du fait qu'il portait cette arme, bien que la loi lui permette de se défendre légitimement.

Le président: D'autres commentaires? Monsieur Ouellet?

M. Ouellet: J'ai ceci dans ma poche. Est-ce une arme? Je commence à jouer avec cela, je m'embarque dans une discussion avec mon ami, monsieur Woolliams...

M. McCleave: Ne le manquez pas, je suis juste à côté.

[Texte]

Mr. Ouellet: Would you consider this a weapon. We are in a public meeting here and I am following the argumentation of my colleague. I am just wondering to what extent this article is not going a little too far.

Obviously I will have the benefit of the doubt, but there might be policemen in the room, following me for a specific reason, and he might just take advantage of this and arrest me because I have it in my hand.

Mr. Woolliams: Mr. Chairman, I would like to comment on that. I do not see that difficulty. You have to go back to the definition:

(a) anything that is designed...

The word "designed" is the active verb. That is not designed as a weapon. You come back...

The Chairman: Excuse me, Mr. Woolliams; where are you reading from?

Mr. Woolliams: That is page three, interpretation. It is certainly not "designed", so we can forget about that. Then we have:

(b) anything that a person uses or intends to use...

There again you have got the action verb. Just tapping the table, arguing with me, with a nail file, or a pocket knife, or even one of those farm knives that they use for various purposes it is not something that is "designed". If, however, he made some overture—came over and dug me in the vest with it and went in several ribs—then you have the action of the verb used.

I followed your point on *mens rea*, but I do not really see—it is subject to interpretation, I have always had a lot of faith in courts and that they are going to interpret things fairly wisely and fairly reasonably—particularly high courts.

I think we are being a little technical at this moment.

The Chairman: Shall proposed section 84 carry?

Mr. MacGuigan: No, Mr. Chairman, I would like it to stand until the Minister has an opportunity to consider our comments. I must say I do not share Mr. Woolliams' faith in courts, where there is no "intent".

Quite often courts may interpret a statutory section to be one of absolute liability, and this one appears to be just that kind of section.

Mr. Woolliams: If I may just help you out in your thoughts, Mr. Schumacher has just brought something to my attention. Anything

[Interprétation]

M. Ouellet: ...est-ce que vous pouvez considérer ceci comme une arme? Nous sommes ici à une réunion publique et je suis l'argument avancé par mon collègue. Et, je me demande dans quelles mesures cet article ne va pas un peu trop loin. De toute évidence, j'aurais le bénéfice du doute. Mais, il y aura peut-être un agent de police dans la salle qui me suivrait, pour une raison ou une autre, et qui profiterait de cette occasion pour m'arrêter parce que j'avais ceci en main.

M. Woolliams: Je ne vois pas cette difficulté. Il faut revenir à la définition:

Toute chose destinée à être employée comme une arme...

Ceci n'est pas considéré comme une arme.

Le président: Excusez-moi, M. Woolliams, où lisez-vous cela?

M. Woolliams: A la page 3. Et, ceci n'est pas destiné à être employé comme une arme. Donc nous pouvons l'oublier. Puis nous avons:

(b) Toute chose qu'une personne emploie ou entend employer...

Même si vous aviez une lime à ongles, ou un petit canif, on ne pourrait pas considérer que c'est quelque chose de destiné à être employé comme une arme. Alors, là il emploie l'arme. Ceci doit être interprété. J'ai foi dans les tribunaux, ils interprètent les choses d'une façon très juste. Je crois que nous sommes en train de discuter en termes trop techniques.

Le président: L'article 84 est-il adopté?

M. MacGuigan: Non, je voudrais que cet article 84 soit réservé jusqu'à ce que le ministre puisse entendre nos commentaires. Je ne partage pas la confiance qu'a M. Woolliams dans les tribunaux. Ceci me paraît une section qui mérite une considération plus étendue.

M. Woolliams: M. Schumacher a attiré mon attention. Toute chose qu'une personne emploie ou entend employer comme une

[Text]

that a person uses, or intends to use, as a weapon to prove the intention he would have to do some overt act; or he might say to you, "I am going to stab Eldon Woolliams with it". Those words would have to be accepted; and he had the power and the tool there to do the job.

I really think it does carry what you are concerned with, and I am quite willing to see it stood, but I think some thought has gone into this.

Mr. MacGuigan: Mr. Chairman, I agree with Mr. Woolliams' interpretation that the man has to make some overt act; he may have to stick the nail file into him. But my point is that at that instant he is guilty not only of assault but also guilty of this offence of carrying a weapon to a public meeting, even though this was not in his contemplation when he took it there.

I would also agree with what Mr. Murphy has said, that if he used it in self-defence he is still guilty under proposed Section 84.

The Chairman: Shall proposed Section 84 carry?

Mr. MacGuigan: No.

The Chairman: What is the feeling of the Committee? Do we have to vote on this?

Mr. McCleave: Mr. Chairman, when several members ask that a clause be stood I think we should grant them that without going to a vote.

The Chairman: Yes. I think that is perhaps proper, but we will have to come to some type of ground rule. It may be one person who asks that a clause stand. I do not think we can get through this bill and have every clause stood. If a certain percentage of members want it stood then I think in fairness and justice we ought to stand it, but we have to have some rule so that this bill is put through within a reasonable time, and at the same time, not hammered through without due thought.

Three or four members have expressed their opinion—and very forcibly—that this clause is not proper in this particular case. Perhaps it should stand. I would however, suggest to the Committee that we should have a fair opinion in favour of standing the clause before we accede to that request because if we do not we are never going to get through this Bill.

Clause 6, proposed Section 84 stood.

[Interpretation]

arme, afin de prouver son intention, devra être coupable d'un acte criminel. Ou alors cette personne vous dira: «je vais tuer Eldon Woolliams avec cette arme!». Elle a donc l'arme et l'intention de commettre l'acte. Je suis d'accord pour qu'on laisse ceci de côté, mais...

M. MacGuigan: Je suis d'accord avec l'interprétation de M. Woolliams, que la personne doit commettre un acte prémédité. Mais mon opinion, c'est qu'à ce moment-là, il est coupable non seulement d'assaut, mais aussi de port d'une arme dangereuse dans une réunion publique. Même s'il utilise cette arme pour se défendre, il est quand même coupable, en vertu de l'article 84.

Le président: Alors, l'article 84 est-il adopté?

M. MacGuigan: Non.

Le président: Quel est le sentiment du comité? Devons-nous voter?

M. McCleave: Je crois, monsieur le président, que plusieurs députés ont demandé que cet article soit réservé. Ainsi nous devons leur accorder ce qu'ils désirent, sans avoir à voter.

Le président: Oui, c'est peut-être exact, mais il faudra arriver à un règlement. On ne peut pas réserver toutes les clauses, tous les articles, mais il faut arriver à une décision, à un règlement qui nous permettra de procéder assez rapidement avec ce projet de loi.

Plusieurs députés ont demandé que cet article soit réservé. Peut-être qu'il devrait l'être maintenant. Mais j'aimerais suggérer au Comité que l'on devrait avoir une opinion équitable avant de réserver un article, parce que, sinon, nous n'en sortirons jamais.

L'article 6 du Bill sur l'article 84 de la Loi est réservé.

[Texte]

Mr. Ouellet: Mr. Chairman, one of the reasons I would like to stand is because I think we should have more explanation from the Minister. I have in mind that this Section could come to abuse in certain circumstances by the police. I am thinking, for instance, if we ever have a kind of convention like the one in Chicago here in Canada, with this kind of article we could be subject to quite a bit of abuse from the police at one point, or manifestation by hippies, and so on, and I certainly would like to have more detail from the Minister.

Mr. MacGuigan: Might I suggest as a matter of procedure that if, say, three members or five or whatever figure is agreeable, wanted to stand a clause that you assess whether that number of members are in favour of standing and then you allow it to stand.

The Chairman: That is perhaps another matter we could take under advisement at the steering committee.

On Clause 6—Proposed Section 85—Carrying concealed weapon.

Mr. MacGuigan: I have a similar objection, Mr. Chairman, to Section 85 with the added complication, as I see, it that Section 85 appears to be aimed primarily at firearms, since I believe it is only firearms for which you can receive a permit. You certainly cannot receive it for ordinary pocket knives, as I understand the proposals, and I do not even understand why, in the case of Section 85, there is any need to extend that beyond the situation of firearms or perhaps a few other similar implements.

Mr. Hogarth: I have a further question of the witness on Section 85.

The Chairman: Just a moment, please. Let us answer this first question. Mr. Scollin?

Mr. Scollin: Again placing perhaps—I do not know—unjustified reliance on the good sense that has been exercised in the use and construction of this section previously, this repeats in substance Section 84 of the Criminal Code as it now exists. I am not aware of any what the layman would call injustice that has arisen on Section 84 which again has been in the Criminal Code for some time.

Mr. Hogarth: Mr. Scollin, you can help me here. I am the holder of a driver's licence. I might not have it with me. A policeman stops a man on the street and he is carrying a pistol concealed and the man says: "Oh well, I am a holder of a permit". Is there anything in the drafting of this statute that requires him to have the permit with the pistol?

[Interprétation]

M. Ouellet: Une des raisons pour lesquelles je voudrais que ce soit réservé, c'est qu'il nous faudrait plus d'explications de la part du ministre. Je crois que, dans certaines circonstances, cet article pourrait entraîner des abus entre les mains de la police. Par exemple, si nous avons une convention comme à Chicago, avec ce genre d'article, nous pourrions être soumis à des abus de la part de la police, une manifestation de hippies et ainsi de suite. J'aimerais avoir plus de détails de la part du ministre.

M. MacGuigan: Pour la procédure, puis-je suggérer que si trois ou cinq députés veulent réserver un article, vous devriez vous assurer que ces députés souhaitent vraiment qu'il soit réservé avant de le mettre sous réserve.

Le président: Je crois que c'est une question que nous pourrions discuter au comité directeur.

Article 6 du Bill—sur l'article 85 de la Loi—port d'une arme dissimulée.

M. MacGuigan: J'ai une objection semblable en ce qui concerne cet article 85. Cet article vise surtout les armes à feu, je crois, puisque c'est seulement pour des armes à feu qu'on peut obtenir un permis. Il n'y en a certainement pas pour les couteaux de poche. Mais je ne comprends pas pourquoi, dans le cas de la section 85, il est nécessaire de l'étendre au delà des armes à feu, ou de quelques armes connexes.

M. Hogarth: Je voudrais poser une autre question au témoin relative à l'article 85.

Le président: Un instant. Commençons par répondre à la première question. M. Scollin.

M. Scollin: Encore une fois, peut-être que je compte trop sur le bon sens avec lequel on a utilisé et rédigé cette disposition, elle est une répétition, en substance, à l'article 84 du Code criminel, qui lui existe depuis quelque temps. Je n'ai jamais entendu parler de ce qu'un profane appellerait une injustice vis-à-vis de l'article 84 qui, encore une fois, figure au code criminel depuis longtemps.

M. Hogarth: Je voudrais vous demander votre aide, monsieur Scollin. J'ai un permis de conduire que je ne porte pas toujours avec moi. Si un agent de police arrête un homme qui porte une arme à feu dissimulée, et que l'homme lui dit: «J'ai un permis pour cette arme à feu.» Est-ce que selon cette mesure on doit avoir son permis sur soi quand on porte le pistolet?

[Text]

Mr. Scollin: No.

Mr. Hogarth: Do you not think it would better if Section 85 were to be amended so that possession of the weapon and possession of the permit to hold the weapon under those circumstances coincide, so that if the man cannot produce the permit immediately the police officer can take what action he might deem necessary under the circumstances?

Mr. Scollin: He already has that right, and he has a right to check and investigate whether in fact the chap is, as he claims, a holder of that permit.

Mr. Hogarth: But you see what I would do here in Ottawa is to tell the police officer that my permit to hold this concealed pistol is in Vancouver or in New Westminster. Now, that takes a considerable amount of time to check and the police officer has no justification that I can see for seizing my gun unless he can find that I have committed some kind of offence.

Mr. Scollin: Again, no practical problem seems to have been encountered by the police in the past in checking on this matter and frankly I am not inclined to imagine the possibility of these difficulties when they have not arisen in the past.

Mr. Hogarth: I appreciate that, but now we are getting the law on firearms in order do you not think that would be a good amendment to Section 85?

Mr. Scollin: I do not think it is necessary, Mr. Hogarth.

Mr. Hogarth: I see.

The Chairman: Are there any further comments?

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Mr. MacGuigan: Mr. Chairman, I have another kind of question on Section 85. I understand that the game and fisheries acts of a number of provinces require that weapons in transit must be enclosed in a case. Would these be considered to be concealed weapons? I suppose normally there would be a permit but the added question is, do you have to acquire a permit every time you go to the target range, to the gunsmith or hunting?

Mr. Scollin: No, this is not the intention and is not the practice under the present scheme. You are given a permit which is valid for a period of a year for the purposes

[Interpretation]

M. Scollin: Non.

M. Hogarth: Est-ce qu'il ne vaudrait pas mieux amender l'article 85 pour que la possession de l'arme et la possession du permis coïncident, de sorte que si l'homme ne peut pas produire son permis immédiatement, l'agent de police peut prendre les mesures nécessaires?

M. Scollin: Je crois qu'il en a déjà ce droit. Il a le droit de vérifier et de faire enquête pour savoir si la personne est titulaire d'un permis.

M. Hogarth: Ce que je ferais, ici à Ottawa, je dirais à l'agent de police que mon permis se trouve à Vancouver ou à Westminster. Il lui faudrait alors beaucoup de temps pour vérifier et l'agent de police n'aurait pas le droit de prendre mon pistolet à moins qu'il puisse prouver que j'ai commis un délit.

M. Scollin: Il semble qu'il n'y a pas eu de difficultés dans le passé pour faire cette vérification et je ne suis pas porté à imaginer des difficultés quand elles ne se sont pas produites par le passé.

M. Hogarth: Vous ne croyez pas que ce serait un bon amendement à l'article 85?

M. Scollin: Je ne pense pas que ce soit nécessaire.

M. Hogarth: Je vois.

Le président: D'autres questions?

M. MacGuigan: Je crois comprendre que les lois de la chasse et de la pêche dans certaines provinces requièrent que, en voyage, les armes soient mises dans un étui. Est-ce qu'on les considérerait comme des armes dissimulées? Il faut normalement un permis, mais est-ce qu'il vous faut un permis à chaque fois que vous allez au champ de tir, chez l'armurier ou à la chasse?

M. Scollin: Non, ce n'est pas le but ni la pratique. On vous donne un permis qui est valable pour un an pour une fin qui est bien précisée, aller au champ de tir, par exemple.

[Texte]

specified in it, taking it to and from the range, for example, and again I suppose applying a modicum of good sense to this the enforcement has not created any apparent injustice.

Mr. Christie: Furthermore, gun cases do not conceal guns. It is a gun case and the likelihood is that there is a gun inside it.

Mr. Scollin: The element of furtiveness is absent which is implicit in the word "concealed".

The Chairman: Shall section 85 carry?

Mr. Hogarth: Mr. Chairman, I am giving serious consideration to proposing an amendment to this section and the other sections dealing with permits, because I think the possession of the gun and the possession of the permit should coincide. The man should have the permit with him when he has the gun outside his home. I think you can have Section 85 carry because that would probably be a separate section altogether dealing with permits.

Mr. McQuaid: Why was the wording changed, Mr. Chairman? In Bill C-195 it said:

Every one who carries concealed a weapon other than a weapon for which he has a permit..

You have changed that to say "... unless he is the holder of a permit..."

Mr. Scollin: This was changed by those who are familiar with the rules of drafting in the Department as being a more precise and accurate way of drafting it, but it is not intentional. The intention was not to change the substance and I do not think it has been changed.

The Chairman: Mr. Deakon?

Mr. Deakon: Going back to the mention of the drafting of the Bill, that is precisely the thing that is wrong with it. Although I agree with my friend Mr. MacGuigan, if you use the word "firearm" instead of "weapon" in Section 85 it would be much preferable.

Mr. MacGuigan: Mr. Chairman, I ask that Section 85 stand for the same reason that I have asked to have Section 84 stand

Clause 6, Proposed Section 85 stood.

On Clause 6, Proposed Section 86—Dangerous use of firearm.

Mr. MacEwan: Mr. Chairman, I took from the Minister's explanation that this covers an

[Interprétation]

En y appliquant un certain bon sens, son application n'a jamais causé d'injustices.

M. Christie: De plus, un étui ne dissimule pas une arme. C'est un étui pour arme à feu et normalement il contient une arme.

M. Scollin: Le mot «dissimulé» comporte un élément d'action à la dérobée.

Le président: Peut-on adopter l'article 85?

M. Hogarth: Je voudrais proposer un amendement à cet article ainsi qu'à tous les autres articles ayant trait aux permis, parce que l'arme et le permis devraient aller de pair. La personne devrait avoir son permis quand elle porte l'arme en dehors de chez elle. Je crois que nous pouvons adopter l'article 85 car mon amendement ferait plutôt l'objet d'un autre article qui s'étendrait à tous les permis.

M. McQuaid: Pourquoi en a-t-on changé la terminologie. Le Bill C-195 dit:

Toutes les personnes qui portent une arme dissimulée autre que celles pour lesquelles il est titulaire d'un permis...

Vous l'avez modifié de sorte qu'on dit maintenant: "... à moins qu'il ne soit le détenteur d'un permis..."

M. Scollin: Ce changement a été apporté par ceux qui sont au courant des règles de la rédaction au sein du ministère. Ils ont pensé que la nouvelle expression serait plus précise. Mais nous ne voulions pas en modifier le fond, et je crois que ce n'est pas le cas.

Le président: Monsieur Deakon?

M. Deakon: Pour en revenir à la question de la rédaction, c'est précisément là qu'il faut s'inquiéter. Je tombe d'accord avec M. MacGuigan qu'il serait préférable d'utiliser le mot arme à feu au lieu du mot «armes» à l'article 85.

M. MacGuigan: Je demande que l'article 85 soit réservé pour la même raison que l'article 84.

L'article 6 du Bill sur l'article 85 de la Loi est réservé.

Article 6 du Bill sur l'article 86 de la Loi—Fait de braquer une arme à feu.

M. MacEwan: D'après l'explication du ministre, je crois que c'est un domaine qui

[Text]

area which heretofore has not been covered. I think what the Minister said is that the dangerous use of a firearm is covered only by laying a charge for criminal negligence. Is that correct?

Mr. Scollin: That is correct.

Mr. MacEwan: I think this does cover an area that was not covered before. I am thinking of a case not long ago when a man was out in the woods in my area and shot a young fellow aged 15, who should not have been there either, who was jacking deer, but that does not matter. The charge, I noted was laid under the provincial lands and forests act and this Section does cover that area now.

Mr. Scollin: It does.

Clause 6, Proposed section 86 agreed to.

On Clause 6, Proposed Section 87—Delivery of firearm to person under 17 years.

Mr. McCleave: Mr. Chairman, here is where I have the amendments flowing out of the submission earlier today. I think probably this is one that the Minister would like to comment on but I will move the amendment now and then perhaps the Clause could be stood until he has a chance to comment on it. I have it written out at length but it is really to change "seventeen" to "fourteen".

The motion is That Section 87 be amended by striking out the word "seventeen" in the fourth line of the English text and the word "dix-sept" in the sixth line of the French text and substituting therefore respectively "fourteen" and "quatorze".

The Chairman: Your feeling is that this motion should be withheld until we hear from the Minister?

Mr. McCleave: It is the point of the submission we heard earlier from Mr. Passmore and Mr. Nicholson.

The Chairman: We will stand Section 87 and withhold the motion until we hear from the Minister if the Committee agree.

Clause 6, Proposed Section 87 stood.

Clause 6, Proposed Section 88 agreed to.

Clause 6, Proposed Section 89—Possession of prohibited weapon.

[Interpretation]

n'était pas couvert avant. Je crois que le ministre a dit que le fait de braquer une arme à feu n'est couvert que sous la rubrique de négligence criminelle. Est-ce exact?

Mr. Scollin: C'est exact.

Mr. MacEwan: Je crois que c'est un domaine qui n'était pas couvert antérieurement. Je pense à un cas qui s'est présenté récemment, où une personne était dans les bois, dans ma région, et a tiré sur un jeune de quinze ans qui n'aurait pas dû être là en fait, car il chassait le chevreuil au projecteur, mais ça revient au même.

La personne a été accusée aux termes de la loi provinciale sur les terres et forêts et maintenant cet article couvre justement ce domaine.

Mr. Scollin: Oui.

L'article 6 du Bill sur l'article 86 de la Loi est adopté.

L'article 6 du Bill sur l'article 87 de la Loi—Livraison d'une arme à feu à une personne de moins de 17 ans.

Mr. McCleave: C'est ici qu'entre l'amendement que j'ai proposé un peu plus tôt. Je crois que le ministre voudrait faire des commentaires à ce sujet. On peut proposer l'amendement maintenant et réserver l'article jusqu'au retour du ministre. L'amendement est simplement de remplacer 17 ans par 14 ans.

Donc il s'agit d'enlever le mot 17 ans et de le remplacer par 14 ans.

Le président: Est-ce que vous voulez qu'on attende que le ministre soit présent?

Mr. McCleave: C'est ainsi que j'ai compris la communication antérieure de MM. Passmore et Nicholson.

Le président: Nous allons réserver l'article 87 et retenir la motion jusqu'au retour du ministre, si le Comité est d'accord.

L'article 6 du Bill sur l'article 87 de la Loi est réservé.

L'article 6 du Bill sur l'article 88 de la Loi est adopté.

L'article 6 du Bill sur l'article 89 de la Loi—Possession d'une arme prohibée.

[Texte]

• 1150

Mr. Hogarth: I have just one question. Why did it not include vessels and aircraft? I am sorry; I thought we were on Section 90.

The Chairman: Shall clause 89 carry?

Mr. Ouellet: If there is a consensus later on relative to the machine gun, do you think that the restriction could be put in Section 89 to prevent those who already have a collection, or do you think it would be the place to register the exception?

Mr. Scollin: It might have to come in several other places, but Section 89 would certainly be the prime place for it.

Clause 6, proposed Section 89 agreed to.

On clause 6, proposed Section 90—Prohibited weapon in motor vehicle.

Mr. Hogarth: My question was: Why does it not include vessels and aircraft in the light of the highjacking that is going on?

The Chairman: Mr. Hogarth, if you have a question would you pose it to Mr. Scollin, please?

Mr. Hogarth: My only question is: Why we did not extend that to vessels and aircraft? That is all. Everyone who is an occupant of a motor vehicle in which he knows there is a prohibited weapon is guilty of an indictable offence, and my suggestion is that it should be everyone who is an occupant of a motor vehicle, vessel or aircraft to cover it all.

The Chairman: Perhaps you could answer the question, Mr. Scollin?

Mr. Scollin: The general use of these weapons in the course of armed crime still involves the use of the basic motor vehicle rather than the aircraft or the vessel. This is what it strikes at.

Mr. Murphy: I might ask the witness one question, Mr. Chairman. This section would cover the situation—and it exists now, I suppose—in which a person enters a vehicle without knowing that a prohibited weapon is in it, or in the possession of someone who is in it, and subsequently learns that it is there. Am I correct in assuming that that person would be guilty of the offence?

Mr. Scollin: One would assume that, within the limits of discretion, he would do his best to get out of the vehicle. If he could not, then

[Interprétation]

M. Hogarth: J'ai une question. Pourquoi ne parle-t-on pas de navires et des avions? Je m'excuse; je croyais qu'on en était à l'article 90.

Le président: L'article 89 est-il adopté?

M. Ouellet: Est-ce que l'on pourrait mettre une restriction à l'article 89 pour empêcher ceux qui ont déjà une collection d'armes, est-ce que ce serait là l'endroit approprié pour inclure l'exception?

M. Scollin: Oui, il y a plusieurs endroits où l'on pourrait l'inclure, mais peut-être que l'article 89 serait l'endroit le plus approprié.

L'article 6 du Bill sur l'article 89 de la Loi est adopté.

L'article 6 du Bill sur l'article 90 de la Loi—Arme prohibée se trouvant dans un véhicule à moteur.

M. Hogarth: Est-ce que cet article traite des navires et des avions, à la vue des arraisonnements d'avions qui ont lieu actuellement?

Le président: Monsieur Hogarth, auriez-vous l'obligeance de vous adresser à M. Scollin.

M. Hogarth: Mon unique question est: Pourquoi n'a-t-on pas inclus dans cet article les navires et les aéronefs. On a limité ceci à un véhicule à moteur. Je propose que l'on y inclue les véhicules à moteur, navires ou avions.

Le président: Pouvez-vous répondre, monsieur Scollin?

M. Scollin: L'utilisation habituelle de ces armes au cours d'une action criminelle à main armée, continue d'incriminer le véhicule automobile plutôt qu'un avion ou un navire. C'est pourquoi nous avons gardé cette expression.

M. Murphy: Puis-je poser une question au témoin? On pourrait avoir le cas d'une personne qui monte dans un véhicule et qui ne sait pas qu'une arme prohibée se trouve dans ce véhicule ou en possession de la personne qui le conduit. Il apprend ensuite que cette personne transporte une arme prohibée, cette personne serait-elle punissable.

M. Scollin: On imagine que la personne ferait de son mieux pour sortir et s'il ne peut pas, aucun tribunal ne pourrait le condamner,

[Text]

I would think that no court in its right mind would convict him—if he had made a genuine effort to dissociate himself from occupancy of the vehicle in which it was contained. But if he carries on knowing it is there, then he falls within the prohibition of the section.

Mr. Deakon: What about Section 94 which refers to the holder of a permit?

Mr. Scollin: That only applies to a restricted weapon.

Mr. Valade: On this point and, as I said, as a layman and not as a lawyer, I have had experience of a case of that sort, about which people wrote to me. The case applied to someone who was under conditional liberation. He was arrested with a group of young men and it so happened that there was a gun in the car. He was convicted. He told the police he was not aware there was a gun in that car, but they convicted him because he was on probation. This is a case where it could be applied, if this is carried through.

Mr. Scollin: Respectfully, they would not convict him simply because he was either on probation or on parole because the requirements at the present time are set out in Section 90, Subsection (3) whereby he is not guilty of an offence if he establishes that he did not know that no occupant of the motor vehicle had a permit, and that he took reasonable steps to discover whether any occupant had one. Presumably, if he had complied with his obligations under Subsection (3) of Section 90 he would not have been convicted. And he certainly would not be convicted just because he was on parole or on probation.

Mr. Valade: I am merely suggesting that the circumstances would be detrimental in such a case, in my experience.

• 1155

Mr. Chappell: I wish to state, with respect—and this is the first one I have really disagreed with—that the drafting of Section 90 could be improved. Surely the purpose is that he knows and continues? It might not reasonably be possible for him to leave that car for two or three hours without endangering his life, and yet in the case of some character suspicious in appearance it might be interpreted too harshly against him. I think it is the knowing and unreasonable continuance that counts.

Mr. Scollin: My reaction to that, Mr. Chappell, is that with the basic fairness and good sense with which I think, hopefully, the law is generally administered, no court and no jury would in those circumstances say that you are guilty.

[Interpretation]

s'il a essayé de sortir du véhicule. Mais s'il continue à rester dans le véhicule en toute connaissance de cause, alors là, bien sûr, il tombe sous le coup de la loi.

M. Deakon: Qu'en est-il de l'article se référant à un détenteur de permis?

M. Scollin: Il s'applique uniquement à une arme à autorisation restreinte.

M. Valade: Je parle ici, en profane, j'ai eu une expérience dans ce cas. Les personnes m'ont écrit, le cas s'appliquait à quelqu'un sous liberté conditionnelle. Il a été arrêté avec un groupe de jeunes et il se trouvait qu'il y avait une arme dans cette voiture. Il a été condamné. Il a dit au tribunal qu'il ne savait pas qu'il y avait une arme dans cette voiture, mais, néanmoins, ils l'ont condamné parce qu'il était en libération conditionnelle.

M. Scollin: Il n'a pas été condamné parce qu'il était en liberté sous conditions, mais bien plutôt parce que selon le présent article 90, alinéa (3), il n'est pas coupable d'un délit, s'il s'assure dans la mesure du possible, si l'un des occupants de l'auto est porteur d'un permis.

M. Valade: Selon mon expérience, je pense que les circonstances peuvent porter à conséquences dans un tel cas.

M. Chappell: J'aimerais dire que c'est la première fois que je ne suis franchement pas d'accord avec le libellé de l'article 90, qui devrait être amélioré. Je pense que s'il n'est pas possible de quitter cette voiture pendant deux ou trois heures sans mettre en danger sa propre vie, sans pouvoir être certain de n'être pas victime d'une vengeance, la suspicion ne devrait pas être retenue contre lui. Il me semble qu'il s'agit là d'une connaissance indéniable du fait qui compte.

M. Scollin: Ma réaction en la matière, c'est qu'avec l'équité, le bon sens dont font preuve ceux qui administrent la loi en général, personne ne serait jugé coupable dans de telles circonstances.

[Texte]

Mr. Chappell: I am afraid that if some "shady-looking" character just happened along the court might read it against him improperly.

Mr. Scollin: The possibility of a mistake, or of the court coming to a wrong conclusion on any one of 100 sections, cannot be excluded, but the wording here seems to imply not only knowledge but acquiescence.

The Chairman: Are there any further comments on Section 90?

Mr. Hogarth: I have just one comment, sir. In Section 89 it says: everyone who has in his possession a prohibited weapon is guilty of an offence. Section 90 states:

Every one who is an occupant of a motor vehicle in which he knows there is a *prohibited weapon*

Under the definition of "possession" in Section 3, I think it is, of the Code, surely they are one and the same offence, are they not?

Section 3 subsection (4) says:

(a) a person has anything in possession when he has it in his personal possession or knowingly

(i) has it in the actual possession or custody of another person

It is the same thing really.

Mr. Scollin: I hardly think one would spread "possession" to the man who is a passenger if, as in the circumstances mentioned by Mr. Chappell, he were to say, "I just could not get out of it. I wanted to get away from it, but I could not. I was afraid. I was held against my will".

Mr. Hogarth: Of course, he would not then have it in his possession, in the true sense, for the purposes of Sections 89 or 90. I am not concerned about that. I am concerned about the fact that 89 and 90 appear to me to be the same offence. I cannot see any difference. If he has it in his possession, he has it subject to Subsection (4) of Section 3, as I have mentioned. If he does not know it is in the car, of course, it is not in his possession.

Mr. Scollin: I think Subsection (4) of Section 3 contemplates an element of custody, or control, or some relationship to the actual object itself. When he has it, knowingly, in the possession of another, for example, implies a custody or a control—a kind of agency relationship—which is not present in Section 90. This is just a straight question of knowledge.

Mr. Woolliams: I think, Mr. Hogarth, if you read the case *Marsh vs Kulchar* you will find

[Interprétation]

M. Chappell: J'ai peur que des personnes suspectes pourraient rejeter cette faute contre cette personne.

M. Scollin: Il peut y avoir des erreurs sur l'un des quelques cent articles, c'est possible, mais il semble que le texte ici n'implique pas seulement la connaissance, mais aussi l'accord.

Le président: D'autres commentaires sur l'article 90?

M. Hogarth: J'ai encore un commentaire. L'article 89 dit: Toute personne en possession d'une arme prohibée est coupable d'un délit. L'article 90 dit:

Est coupable... quiconque occupe un véhicule à moteur qu'il sait renfermer une arme prohibée.

Selon la définition de «possession» de l'article 3 du Code, je pense qu'il s'agit d'une seule et même offense, n'est-ce pas? L'article 3, paragraphe (4) dit:

(a) Une personne possède une chose lorsqu'elle la détient personnellement ou en connaissance de cause.

(i) ...possède réellement ou à la garde d'une autre personne.

C'est vraiment la même chose.

M. Scollin: Je n'étendrais pas la possession à ce passage, si dans les circonstances mentionnées par M. Chappell, il disait: «Je n'ai pas pu m'en sortir. Je voulais mais je ne pouvais pas, j'avais peur. On m'a retenu contre ma volonté.» Donc, il ne serait pas possesseur de l'arme selon les articles 89 et 90.

M. Hogarth: Bien entendu. Ce qui me préoccupe c'est qu'aux articles 89 et 90, c'est la même infraction. Je ne vois aucune différence.

S'il possède l'objet, il le possède conformément à la définition de la section 3 paragraphe (4). S'il ne sait pas que l'objet est dans la voiture, ce dernier n'est évidemment pas en sa possession.

M. Scollin: Je pense que le paragraphe (4) de l'article 3 envisage une question de contrôle ou un rapport avec l'objet lui-même. C'est tout simplement une question de jugement.

M. Woolliams: Je crois, monsieur Hogarth, que si vous lisiez le cas *Marsh contre Kulchar*,

[Text]

that the Supreme Court of Canada differentiated between one kind of possession, which means on you, and another kind of possession, which you are discussing. I think the courts would follow that line of reasoning.

Mr. MacGuigan: Mr. Chairman, I think there would be a distinction, too, for example if a prohibited weapon were in the trunk of a car. It would not be prohibited under Section 89, but it would under Section 90. Suppose there was no other occupant—just the driver—but he admitted that he knew the prohibited weapon was in the trunk, or it could be proved some other way. I think he would be guilty under Section 90 and not under Section 89.

Mr. Hogarth: Let it pass, Mr. Chairman.

The Chairman: Shall Clause 90 carry?

Mr. McQuaid: Mr. Chairman, may I ask one question.

The Chairman: On Clause 90, Mr. McQuaid?

Mr. McQuaid: Yes. Would the Minister give consideration to making this a non-indictable offence? It seems to be rather harsh to have a man branded as a criminal with a criminal record simply because he happens to be in an automobile in which he knows there is a prohibited weapon. It seems to me that a summary conviction should be enough.

If you turn back to Section 84, relative to a man with a weapon in his possession when he is going to attend a public meeting, that is only a summary conviction offence.

• 1200

Mr. Scollin: Imagine the circumstances where the car is one block from a major bank and the weapons in the car are one, or two, or perhaps even three bazookas and a few weapons of that sort. Perhaps in those circumstances, and bearing in mind the situation in which they are found, there might very well be good reason for suggesting that it is a case in which the Crown might want to invite the court to treat it as more than a summary conviction offence.

Mr. McCleave: It would be a method of dealing with criminals, would it not?

Mr. Scollin: This is what it is intended to be. It is liable to hook the innocent fellow as well.

Mr. McCleave: It would be in the lesser category.

Mr. Hogarth: It is an indictable offence and everybody in the car can be...

[Interpretation]

que vous trouveriez la différence établie par la Cour suprême en ce qui concerne le genre de possession.

M. MacGuigan: Par exemple, si l'arme se trouve dans le coffre de la voiture, le délit serait punissable en vertu de l'article 90 mais non en vertu de 89. Supposons que le conducteur soit seul, et qu'il admette qu'il savait qu'une arme prohibée se trouvait dans le coffre, ou que cela peut être prouvé d'une façon ou d'une autre. Je pense qu'il serait trouvé coupable en vertu de l'article 90 et non en vertu de 89.

M. Hogarth: Passons, monsieur le président.

Le président: L'article 90 est-il adopté?

M. McQuaid: Puis-je poser une question?

Le président: Si c'est au sujet de l'article 90.

M. McQuaid: Est-ce que le ministre pourrait envisager de faire de cela une infraction non punissable? Vraiment ça me paraît beaucoup de condamner quelqu'un simplement parce qu'il sait qu'il y a quelque chose, qu'il y a une arme dans la voiture. Je pense qu'une déclaration sommaire de culpabilité suffirait.

M. Scollin: Mais lorsque la voiture se trouve à un bloc d'une banque et lorsqu'il y a trois bazookas dans la voiture ou des armes de genre, dans ce cas, bien sûr, tenant compte de la situation, il y aurait de bonnes raisons pour suggérer qu'on devrait traiter cela plus sévèrement.

M. McCleave: Ce serait une nouvelle méthode de traiter les criminels?

M. Scollin: C'est ce que nous voulons que ce soit. Il semblerait qu'on puisse aussi accuser un innocent?

M. McCleave: En tout cas, pour de petits délits.

M. Hogarth: C'est une offence criminelle et chacun dans la voiture peut être...

[Texte]

Mr. Christie: Just a moment, it is optional. In an unimportant case, the Crown can exercise discretion to proceed by way of summary conviction.

Mr. Hogarth: Everybody in the car can be fingerprinted.

Clause 90 agreed to.

On Clause 91

Mr. MacGuigan: I have a question on Clause 91, Mr. Chairman. Is the seller of weapons provided for in Section 91 or in some other section? It does not appear to be in Section 91. A seller would have weapons in his possession.

Mr. Scollin: Yes. That is provided for later on in the series of provisions.

Mr. MacGuigan: But in such a way as to exempt him from Section 91?

Mr. Scollin: Yes.

The Chairman: If it is the wish of the Committee, perhaps we could complete Clause 91 and then adjourn until 3.30.

Mr. MacGuigan: Perhaps Mr. Scollin could give me the section number. I missed it.

Mr. Woolliams: When do we meet with the steering committee?

The Chairman: At 12.30, if possible. We will now adjourn until 3.30 this afternoon.

Mr. MacGuigan: May I get this section number first, Mr. Chairman?

Mr. Scollin: Section is 98c, paragraph (a), page 18.

The Chairman: We will have a meeting of the steering committee, Mr. Woolliams, at 12.30 in the parliamentary restaurant. I ask all members of the steering committee to be present at 12.30. The meeting is now adjourned.

AFTERNOON SITTING

• 1537

The Chairman: Gentlemen, I see a quorum. We held our Steering Committee meeting. It was very congenial. I believe we actually arrived at some fair compromise solutions.

[Interprétation]

M. Christie: Un instant, on peut choisir. Dans un cas important, la Couronne peut exercer, à sa discrétion, le droit de procéder par voie de conviction sommaire.

M. Hogarth: On peut prendre les empreintes digitales de tous les occupants de la voiture.

L'article 90 est adopté.

Article 91.

M. MacGuigan: J'ai une question au sujet de l'article 91, monsieur le président.

Est-ce que l'article 91 traite du marchand d'armes à feu ou est-ce dans un autre article? Il me semble que ce n'est pas dans l'article 91, car un marchand aurait des armes en sa possession.

M. Scollin: Oui on traite du marchand d'armes un peu plus loin dans une série de dispositions.

M. MacGuigan: Ainsi, on ne parle pas de lui dans l'article 91?

M. Scollin: Oui.

Le président: Si tel est le désir du Comité, nous pourrions terminer l'étude de l'article 91 et lever la séance jusqu'à trois heures trente.

M. MacGuigan: Peut-être M. Scollin pourra-t-il me donner le numéro de l'article? Je l'ai oublié.

M. Woolliams: Quand le Comité directeur se réunira-t-il?

Le président: A douze heures trente, si possible. Nous levons maintenant la séance, jusqu'à trois heures trente cet après-midi.

M. MacGuigan: Puis-je avoir le numéro de l'article, monsieur le président?

M. Scollin: L'article 98c, paragraphe (a) page 18.

Le président: Le comité directeur se réunira donc à midi trente, monsieur Woolliams, au restaurant parlementaire. Je demande à tous les membres du comité directeur de bien vouloir être présents.

La séance est levée.

SÉANCE DE L'APRÈS-MIDI

Le président: Messieurs, nous avons quorum. Nous avons tenu la réunion du Comité de direction qui a été très agréable. Je pense que nous en sommes arrivés à des solutions de compromis assez équitables.

[Text]

In relation to the calling of witnesses, the Steering Committee recommends that a maximum of six witnesses be allowed, with the following provisos: first, these said witnesses must give evidence only on the technical and legal aspects of the bill and refrain from any substantive comment on the pros and cons of the subject matter of the bill; second, the aforesaid witnesses would be approved by the Steering Committee; and third, the witnesses will be heard as early as possible, the intention being to schedule the first witness for next Tuesday at 9.30 a.m.

In relation to the standing of clauses, it was suggested that if not more than seven members wish a clause stood, then that clause should be passed upon.

Mr. Valade: Mr. Chairman, I am sorry I did not get that.

The Chairman: If more than seven members wish a clause stood, then it should be stood. Otherwise it is voted on.

In relation to your presence, Mr. Minister, it was suggested that if you have departmental and ministerial responsibilities which necessitate your presence elsewhere, you would be excused and this would be more or less at your own discretion.

The Honourable John Napier Turner (Minister of Justice and Attorney General of Canada): Thank you.

The Chairman: We feel that we should not keep you here to any great extent other than for the time that is absolutely necessary. We fully realize that you have other responsibilities.

Mr. Turner (Ottawa-Carleton): I intend to be here as often as I can.

The Chairman: These are the recommendations of the Committee, and if there is no comment...

Mr. Valade: Mr. Chairman, I have some comments on this. These are my personal reservations. I would certainly want to voice opposition to this recommendation. I do not know if a recommendation from the Steering Committee can bind the Committee; I do not think the Committee is obliged to accept these recommendations without discussion.

I would certainly oppose the first and the second recommendations to the effect that the witnesses will be limited to six and also that these witnesses would be called only to answer on technical and legal aspects. To me, this kind of procedure destroys the very purpose of my presence and maybe some other

[Interpretation]

En ce qui concerne les témoins, le Comité de direction recommande que le maximum de six témoins soit permis, sauf la réserve suivante: premièrement, les témoins doivent seulement témoigner sur les aspects légaux et techniques du bill et ne pas faire de remarques pour ou contre la substance du bill; deuxièmement, lesdits témoins seraient approuvés par le Comité de direction; et troisièmement, les témoins seront entendus aussitôt que possible en essayant d'entendre le premier témoin mardi prochain à 9 h. 30.

On a suggéré que si pas plus de sept membres désirent qu'une clause soit réservée, que cette clause soit adoptée.

M. Valade: Monsieur le président, je m'excuse, mais je n'ai pas compris.

Le président: Si plus de sept membres veulent qu'une clause soit réservée, alors elle sera réservée. Autrement, on prend le vote.

Et en ce qui concerne votre présence, monsieur le ministre, on a suggéré que si vous avez des responsabilités, des engagements ministériels ou gouvernementaux qui requièrent votre présence ailleurs, que vous soyez excusé et que votre présence soit laissée à votre propre discrétion.

L'honorable John Napier Turner (ministre de la Justice et Procureur général du Canada): Merci.

Le président: Nous ne voulons pas vous retenir ici plus qu'il serait absolument nécessaire. Nous comprenons que vous avez des responsabilités.

M. Turner (Ottawa-Carleton): J'essaierai d'être ici aussi souvent que possible.

Le président: Voilà les recommandations du comité et si vous n'avez pas de remarques à faire à ce sujet...

M. Valade: Monsieur le président, j'ai des commentaires à faire à ce sujet. Je voudrais certainement m'objecter à cette recommandation. Je ne sais pas si une recommandation du comité directeur engage le Comité. Je ne pense pas que l'on puisse accepter ses recommandations sans discussion.

Je m'opposerais certainement à la première et à la deuxième recommandation, à savoir que le nombre de témoins serait limité à 6, que ces témoins seraient appelés seulement pour répondre aux questions sur les aspects techniques et légaux. A mon avis, cette procédure détruit l'objet même de ma présence et

[Texte]

members' presence in this Committee because in some parts of the Bill, such as abortion, certainly the substance is more important than the technicalities as far as I am concerned because we have to determine whether the principles involved and the substance involved are not of such importance as to give us reason to object to the drafting of a bill of this sort or an amendment of this sort of both the technical and legal aspects.

I certainly would like some other members to let the Committee know whether, on this serious question of abortion, they believe the importance or the emphasis should be on technical and legal aspects. I do not believe so. I believe this is destroying the purpose of the discussion. We are certainly revising parts of the Criminal Code, but there are some aspects of these amendments that must necessarily take into consideration the substance of the amendments. I, personally, want to voice my opposition to that very strongly; I think it is restricting my freedom to express views and to call witnesses to discuss substance, particularly of the abortion section.

I am not here as a lawyer; I am here as a layman. And the people of this country are not all lawyers. We are voicing the opinions of the people in general; therefore, I do not think we should concern ourselves with only the technical and legal aspects of this.

That is all I wanted to say. I have no more power than the exercise of my freedom to say that I oppose this kind of procedure very strongly. It is the first time in my experience as a member of committees that we have restricted or limited the number of witnesses to be called before a committee hearing. It is also the first time, to my knowledge, that we can discuss only some parts or some aspects of any bill brought before a committee. For these reasons I object very strongly. If this is carried, I will find no reason for me to sit in this Committee anymore because I want to speak on the substance of the Bill and not on the technicality or legality because I am not a lawyer.

The Chairman: Mr. Valade, perhaps it might be helpful for you to know that Mr. Woolliams was at this Steering Committee meeting and concurred, of course, in this report.

[Interprétation]

de la présence d'autres membres du Comité parce que, dans certaines parties du bill, comme en ce qui concerne l'avortement, il est sûr que la substance est plus importante que les questions d'ordre technique en ce qui me concerne, parce qu'il nous faut déterminer si le principe en jeu, et la substance du bill, ne sont pas d'une importance telle que nous ayons raison de nous objecter à la rédaction d'un bill de cette nature ou à sa terminologie du point de vue technique et légal.

Et, par conséquent, j'aimerais que d'autres membres disent au Comité s'ils sont d'avis, au sujet de cette question très grave de l'avortement, si l'emphase doit être sur la technicalité, et je ne le crois pas. Je crois que cela défait le but de la discussion. Nous revisons certainement des parties du Code criminel, mais il y a certains aspects de ces modifications qui doivent nécessairement prendre en considération la substance des amendements.

Pour ma part, j'exprime mon opposition très vigoureuse à ces recommandations. Je pense que l'on ne doit pas empêcher les témoins de discuter de la substance du bill.

Je suis ici non pas en tant qu'avocat, mais en tant que laïque. Il y en a d'autres qui ne sont pas des avocats. Nous exprimons l'avis des gens en général; de la population en général, et je ne pense pas que nous devions nous en tenir aux aspects techniques et légaux de la question.

C'est tout ce que j'ai à dire à ce sujet. C'est la seule liberté qui me reste, celle de dire que je m'oppose violemment à ce genre de procédure et j'aimerais que les membres du Parlement... C'est la première fois que je constate en ma qualité de membre d'un comité que nous ayons limité le nombre des témoins à appeler à une séance du comité. Aussi c'est la première fois, à ma connaissance, que l'on nous permet de discuter seulement de quelques aspects ou de certaines parties d'un bill à l'étude. Pour ces raisons je m'objecte très violemment. Si l'on adopte ces recommandations, je ne vois pas pourquoi je siégerais ici parce que je voudrais parler de la substance du bill et non pas de la technicalité parce que je ne suis pas un avocat.

Le président: Monsieur Woolliams qui est absent a approuvé ce rapport.

[Text]

Mr. Valade: Yes, I agree, Mr. Chairman, but we did not have time to discuss this matter with him before or after because I think it was a meeting called on the urgency of the questions raised this morning. This was done in order not to delay the proceedings of the Committee, but it did not give us the chance to meet together to look into all the aspects of the procedure.

The Chairman: Are there any further comments? Mr. Chappell?

Mr. Chappell: I think we worked out a reasonable compromise. Who would choose the six witnesses? The Steering Committee?

• 1545

The Chairman: The idea was put forward that each party would have a chance to supply certain of the witnesses. For example, the Liberals would have a chance to suggest perhaps two witnesses—this is not cut and dried; this is something we discussed—the Conservatives two, the NDP one and the Créditistes one. These witnesses would actually be technical witnesses for the Committee itself.

Mr. Chappell: I see; thank you.

Mr. Hogarth: Mr. Chairman, would there be any necessity for the witnesses to submit minutes of their evidence before they come?

The Chairman: No, this was not thought to be necessary.

You have heard the comments from the Chair. I think perhaps to resolve this question, I would like to entertain a motion along the lines that I have just suggested.

Mr. Gilbert: I move that:

- (1) a maximum of six expert witnesses would be called;
- (2) their evidence must be pertinent to the technical and legal aspects of the bill rather than philosophical;
- (3) witnesses must be approved by the Steering Committee and called as early as possible;
- (4) the Minister is to be excused at his own discretion when official duties demand.

Mr. Woolliams: Mr. Chairman, I am sorry I am a little late.

The Chairman: There is a motion before the Committee moved by Mr. Gilbert that the recommendations of the Steering Committee be adopted.

[Interpretation]

M. Valade: Je suis d'accord, monsieur le président, mais nous n'avons pas eu le temps de discuter de cette question avec lui avant ou après parce que c'est une réunion qui a été appelée à cause de l'urgence de la question et nous l'avons fait pour nous éviter des retards mais nous n'avons pas eu l'occasion de nous réunir afin d'étudier tous les aspects de la question.

Le président: Merci beaucoup. Monsieur Chappell?

M. Chappell: Je pense que vous en êtes arrivés à un compromis raisonnable mais qui va choisir ces six témoins? Est-ce le comité de direction?

Le président: On a proposé que chaque parti ait l'occasion de fournir certains témoins. Par exemple, les libéraux auraient l'opportunité de proposer deux témoins, c'est une chose que nous avons discuté. Les Conservateurs pourraient proposer deux témoins, les Créditistes un et les Socialistes, un. Ces témoins seraient, en fait, des témoins sur les questions techniques pour le Comité même.

M. Chappell: Je vois; merci.

M. Hogarth: Monsieur le président, serait-il nécessaire que les témoins soumettent un résumé de leurs témoignages avant de comparaître?

Le président: Non, cela n'est pas nécessaire. Vous avez entendu les commentaires de la présidence. Je pense que nous avons résolu cette question et j'aimerais entendre une motion dans le sens que je viens de mentionner.

M. Gilbert: Je propose que:

- 1) un maximum de six témoins experts soient convoqués;
- 2) leurs témoignages portent sur les aspects philosophiques;
- 3) les témoins soient approuvés par le Comité de direction et qu'ils soient convoqués le plus tôt possible;
- 4) le Ministre soit libre de s'absenter lorsque ses obligations officielles l'exige.

M. Woolliams: Monsieur le président, je regrette d'être un peu en retard.

Le président: Le Comité a entendu une motion faite par Monsieur Gilbert pour que les recommandations du Comité de direction soient adoptées dans le sens que vous savez.

[Texte]

Mr. Valade: Mr. Chairman, for Mr. Williams' sake maybe I should repeat not all that I have said but that aspect of it relating to the manner in which the Steering Committee came to its decision. I said before that this consultation of the Steering Committee to try to find a way to expedite business happened during dinner time and we have had no chance to consult among ourselves on these things, neither before nor after. This is one of the reasons I object to this procedure.

The Chairman: Yes, I acknowledge your remarks. All in favour?

Motion agreed to.

Mr. Valade: Mr. Chairman, I want you to know that I am withdrawing from the Committee because as a layman I can be of no technical or legal assistance.

M. Ouellet: Monsieur le président, le fait que nous permettons à un certain nombre de témoins de venir parler sur les aspects techniques du Bill, c'est justement pour aider un type comme M. Valade quise dit non-avocat et qui aurait besoin d'aide sur l'aspect technique. Je pense bien qu'il est assez vieux pour prendre ses responsabilités lui-même et qu'il n'a pas besoin d'experts pour lui faire prendre une décision sur la substance. Je trouve que son argumentation ne tient pas du tout et qu'elle est complètement fausse.

The Chairman: Thank you, Mr. Ouellet.

On Clause 6, proposed Section 91—*Unregistered restricted weapon*.

Mr. Hogarth: Mr. Chairman, I think I was one of the persons who asked that this proposed section be held up, but I have reflected on what I propose to do over the adjournment and it will not impede me if it is carried. I want to add a section after Section 91 later.

Clause 6, proposed Sections 91 and 92 agreed to.

On Clause 6, proposed Section 93—*Possession outside dwelling house*.

Mr. MacGuigan: Mr. Chairman, on the proposed Section 93 I would like some further explanation of how the system of permits is going to work. Is there to be a permit for each firearm and is there to be a permit for each mode of carrying it, or it is a single permit to operate for a person and can he buy more firearms under this permit and so on? Perhaps we could have a brief outline of this type of thing.

[Interprétation]

M. Valade: Peut-être que je devrais non pas répéter tout ce que j'ai dit, mais la partie qui porte sur la façon dont le Comité de direction a pris sa décision. J'ai dit que cette consultation du Comité de direction en vue de trouver une façon de procéder plus expéditive s'est produite pendant le déjeuner, et nous n'avons pas eu le temps de nous consulter entre nous. C'est la raison pour laquelle je m'objecte à cette motion.

Le président: Oui, je comprends votre point de vue. Combien sont favorables à la motion?

La motion est adoptée.

M. Valade: Monsieur le président, je vous informe que je me retire du comité parce que n'étant pas avocat, je ne peux pas être utile au point de vue technique et légal.

Mr. Ouellet: Mr. Chairman, I think the fact that we are allowing a certain number of witnesses to appear here to talk on the technical aspects of the Bill is exactly to assist people like Mr. Valade who says he is not a lawyer and would need assistance on the technical aspects. I think he is old enough to face his own responsibilities himself and does not need experts to help him take a decision regarding the substance. I think his argument is nonsensical and completely false.

Le président: Merci, monsieur Ouellet. A la page 9, article 91—*Défaut d'enregistrement d'une arme à autorisation restreinte*.

M. Hogarth: Je suis l'un des premiers qui a demandé que l'on retarde l'étude de cet article, mais je n'ai pas d'objection à ce que l'on adopte cet article. Je veux ajouter, plus tard, un article à l'article 91.

L'article 6 du Bill sur les articles 91 et 92 de la Loi est adopté.

L'article 6 du Bill sur l'article 93 de la Loi—*Possession ailleurs que dans une maison d'habitation*.

M. MacGuigan: Sur l'article 93. Monsieur le président, j'aimerais que l'on me donne des éclaircissements sur le fonctionnement de ce régime des permis. Est-ce qu'il doit y avoir un permis d'émission pour chaque arme à feu et doit-on avoir un permis pour chaque façon de porter l'arme? Est-ce qu'une personne peut acheter d'autres armes sous le même permis? On pourrait peut-être nous donner un résumé de la pensée du ministère sur ce point.

[Text]

• 1550

Mr. Turner (Ottawa-Carleton): This will be a matter for the form itself, but we contemplate that the permit will be registered in the name of the person authorized to carry or possess the weapon and that the permit could apply to several weapons and the conditions could be attached to each of the weapons.

Mr. MacGuigan: Well, there is a fear on the part of some riflemen that whereas in the past they have been able to leave their unused guns at the police station when they are away on vacation, from now on they will not be able to handle them this way on their permits. If his hand gun is not so listed does he have to leave it at home or what? I assume that it would be covered by the same permit and that this problem is not likely to arise.

Mr. Turner (Ottawa-Carleton): That is our assumption too.

Clause 6 (1) proposed Section 93 agreed to.

On Clause 6 (1), proposed Section 94—Restricted weapon in motor vehicle.

Mr. Chappell: Mr. Chairman, I would just like to say that I have the same objections to 94 as I have to 91. I think it is sufficiently restrictive that some person could be convicted because he had knowledge but could not reasonably detach himself from the vehicle. I think at times it might lead to an assumption against him and put him in a position to be prejudiced.

The Chairman: Any further comments? Mr. Deakon.

Mr. Deakon: Yes, Mr. Chairman, this section apparently contemplates some form of a permit authorizing the carrying of a restricted weapon in a motor vehicle.

Mr. Turner (Ottawa-Carleton): Oh, no.

Mr. Deakon: That is what it says.

Mr. Turner (Ottawa-Carleton): The permit relates to the possession of the weapon. It is the fact that the weapon may be in the vehicle—I asked the same question myself. It reads this way:

under which he may lawfully have that weapon in his possession

That is the permit. But the weapon happens to be in the vehicle. Do you get it?

[Interpretation]

M. Turner (Ottawa-Carleton): C'est une question de forme, mais nous pensons que le permis doit être inscrit au nom de la personne qui est autorisée à posséder ou porter cette arme. Le permis pourrait s'appliquer à plusieurs armes et chacune de ces armes pourrait faire l'objet de conditions spéciales.

M. MacGuigan: Certains chasseurs craignent qu'il ne leur soit plus permis de laisser leurs armes à feu chez le chef de police pendant leurs vacances, comme cela se faisait auparavant. Si le permis ne mentionne pas le genre d'arme, doit-il la laisser à la maison ou quoi? Je suppose que l'arme serait couverte pour le même permis et que ce problème ne se présentera probablement pas.

M. Turner (Ottawa-Carleton): C'est aussi ce que nous supposons.

L'article 6(1) du Bill sur l'article 93 de la Loi est adopté.

L'article 6(1) du Bill sur l'article 94 de la Loi—Arme à autorisation restreinte se trouvant dans un véhicule à moteur.

M. Chappell: Monsieur le président, je voudrais simplement dire que j'ai les mêmes objections à l'article 94 qu'à l'article 91. Je crois qu'il y a déjà une restriction suffisante dans le fait qu'une personne pourrait être condamnée pour avoir eu connaissance de la présence d'armes à feu, alors qu'elle ne pouvait raisonnablement pas quitter le véhicule. Cela pourrait parfois mener à des suppositions contre la personne et lui causer du tort.

Le président: Y a-t-il d'autres observations? Monsieur Deakon?

M. Deakon: Oui, monsieur le président, on songe apparemment à prévoir, par cet article, une sorte de permis pour le port d'armes à autorisation restreinte dans un véhicule.

M. Turner (Ottawa-Carleton): Mais non.

M. Deakon: C'est pourtant ce que l'on dit.

M. Turner (Ottawa-Carleton): Le permis a trait à la possession de l'arme à feu. C'est le fait que cette arme puisse être dans un véhicule. Je me suis posé la même question. On dit:

En vertu duquel il peut légalement avoir cette arme en sa possession dans ce véhicule.

C'est cela le permis. Mais il se trouve que l'arme à feu est dans le véhicule. Vous comprenez?

[Texte]

Mr. Deakon: Yes, I get it now.

Mr. Turner (Ottawa-Carleton): Yes, I had the same problem.

Mr. Deakon: It is really ambiguous.

Mr. Turner (Ottawa-Carleton): I asked the same question when we reviewed—the permit attaches to the weapon. The fact that he has it in the vehicle, then he has to show that he had a permit for it. It is not having a permit to have a weapon in a vehicle.

Clause 6 (1) proposed Section 94 agreed to.

On Clause 6 (1), proposed Section 95—Order prohibiting possession of firearm or ammunition.

Mr. McQuaid: With respect to proposed Section 95, Mr. Chairman, what is the definition of “ammunition”?

Mr. Turner (Ottawa-Carleton): Nowhere in the Criminal Code is there a definition of “ammunition”. It means what it says, the dictionary meaning: something that can be discharged from a weapon.

Mr. McQuaid: Does the dictionary say that? There are all kinds of ammunition. There is paper ammunition. Do you not think that for the sake of clarity we should put in the definition of ammunition if it is now going to be an offence to have ammunition in your possession?

The Chairman: Mr. Deakon.

Mr. Deakon: If you look at proposed Section 86, it refers to ammunition also but it specifies that it must be used:

in a manner that is dangerous to the safety of other persons.

I assume that...

Mr. McQuaid: That is the firearms that you are talking about.

Mr. Deakon: I know, but it uses the word “ammunition” also.

Mr. McQuaid: What is ammunition?

Mr. Turner (Ottawa-Carleton): I am trying to find for Mr. McQuaid some references to “ammunition” in the present Code.

Mr. Woolliams: Is it defined in the Code anywhere?

[Interprétation]

M. Deakon: Oui, maintenant je comprends.

M. Turner (Ottawa-Carleton): Oui, j'ai eu le même problème.

M. Deakon: La phrase est vraiment ambiguë.

M. Turner (Ottawa-Carleton): J'ai posé la même question lorsque nous avons examiné... Le permis se rattache à l'arme elle-même. Si la personne transporte une arme dans le véhicule, elle doit montrer qu'elle détient un permis pour cette arme. Il ne s'agit pas d'avoir un permis pour transporter une arme dans un véhicule.

L'article 6 (1) du Bill sur l'article 94 de la Loi est adopté.

L'article 6(1) du Bill sur l'article 95 de la Loi—Ordonnance prohibant la possession d'une arme à feu ou de munitions.

M. McQuaid: En ce qui concerne l'article G5 proposé, monsieur le président, quelle est la définition du terme «munitions»?

M. Turner (Ottawa-Carleton): Nulle part dans le Code criminel on ne définit le terme «munitions». Le terme dit bien ce qu'il veut dire, d'après le sens donné dans le dictionnaire, à savoir: ce qui est nécessaire au changement des armes à feu.

M. McQuaid: Le dictionnaire donne-t-il vraiment cette définition? Il y a toutes sortes de munitions: Il y en a même en papier. Ne pensez-vous pas que, pour la clarté, on devrait définir ici le terme «munitions», si la possession de «munitions» devient une infraction?

Le président: Monsieur Deakon.

M. Deakon: Si vous regardez l'article 86 proposé, il a aussi trait aux munitions, mais on y dit que ces munitions doivent être utilisées:

de telle façon que cela met en danger la sécurité d'autrui.

Je suppose que...

M. McQuaid: Vous parlez là des armes à feu.

M. Deakon: Je sais, mais dans cet article aussi, on emploie le mot «munitions».

M. McQuaid: Qu'est-ce que des munitions?

M. Turner (Ottawa-Carleton): J'essaie de trouver pour M. McQuaid des références aux munitions dans le Code actuel.

M. Woolliams: Est-ce qu'on définit ce terme dans le Code?

[Text]

Mr. Turner (Ottawa-Carleton): No. It is just referred to.

Mr. Woolliams: It is not defined anywhere.

Mr. Turner (Ottawa-Carleton): It is not defined anywhere in the Code. It never has been. You cannot define it because there are new kinds of ammunition being developed all the time. It is something that is discharged from a weapon or used to make a weapon effective.

The Chairman: Mr. Hogarth.

Mr. Hogarth: May I ask what a beanshooter is?

• 1555

Mr. Turner (Ottawa-Carleton): A bean-shooter is—the peas in a beanshooter are ammunition but since the weapon itself is not within the definition here, I guess the ammunition would not be covered either. I think we will leave the peashooters out.

The Chairman: Mr. Hogarth.

Mr. Hogarth: I would like to ask the Minister why it is necessary that a person be convicted of an offence particularly vis-à-vis the provisions of Section 717. It is my respectful submission that where an order is made under Section 717, the magistrate should have the further power under this section that we are considering—proposed Section 95—to prohibit that person from possessing any weapons, because very often the threat that is made under 717, although it may not directly involve the use of firearms, can lead the magistrate to believe that at some future time they might be used. And I think that this section should provide that where a person is convicted of an offence or an order is made under the provisions of Section 717, etcetera, the court judge may make an order.

I would support that, sir, with two homicide case I prosecuted in which women were killed with rifles, and in each instance at prior occasions there had either been common assault charges or alternatively there had been orders made under 717.

Mr. Turner (Ottawa-Carleton): I want to refer you, Mr. Hogarth, to page 20 of the bill, proposed Section 98G, where the Attorney General can ask for a court order to seize weapons wherever he believes in the interests of the safety of any person, that the weapons should not be possessed. This gives you the...

[Interpretation]

M. Turner (Ottawa-Carleton): Non, on le mentionne seulement.

M. Woolliams: On ne le définit nulle part.

M. Turner (Ottawa-Carleton): Il n'est défini nulle part dans le Code. Il ne l'a jamais été. On ne peut le définir, car on invente sans cesse de nouvelles sortes. Une munition est toute chose qui peut être tirée d'une arme ou qui sert au chargement d'une arme.

Le président: Monsieur Hogarth.

M. Hogarth: Pourrais-je demander ce qu'est un tire-pois?

M. Turner (Ottawa-Carleton): C'est... Les pois dans un tire-pois sont des munitions, mais puisque l'arme elle-même ne tombe pas sous le coup de l'article 717. En toute déférence, je pense que cela ne s'appliquerait pas non plus aux tire-pois. Je crois que nous allons laisser les tire-pois de côté.

Le président: Monsieur Hogarth.

M. Hogarth: Je voudrais demander au ministre pourquoi il est nécessaire qu'une personne soit condamnée pour une offense sous le coup de l'article 717. En toute déférence, je pense que lorsqu'un ordre a été émis en vertu de l'article 717, il faudrait donner au magistrat d'autres pouvoirs en vertu de l'article 95 pour empêcher cette personne de posséder une arme à feu, parce que souvent même si la menace faite sous l'article 717 ne comporte pas toujours l'usage de l'arme à feu, elle peut porter le magistrat à croire qu'elle le sera un moment donné. Je pense que cet article devrait prévoir que lorsqu'une personne est condamnée pour une offense ou qu'un ordre a été émis en vertu de l'article 717, etc., le juge peut émettre un ordre.

J'ai deux causes d'homicides à citer à l'appui, où des femmes ont été tuées avec des carabines, et dans chaque cas, on avait au préalable porté des accusations de voie de fait en vertu de l'article 717.

M. Turner (Ottawa-Carleton): Monsieur Hogarth, à la page 20 du bill, sous l'article 98G, on dit que le procureur général peut demander un mandat de saisie des armes, s'il croit qu'il est de l'intérêt d'une personne qu'on interdise la possession des armes. Ce qui nous donne...

[Texte]

Mr. Hogarth: I appreciate that, Mr. Minister, but to have to get the Attorney General to make an application to a Supreme Court judge in an instance such as this, seems to me to be...

Mr. Turner (Ottawa-Carleton): Yes, this means really that a Crown prosecutor goes before a judge. I do not think we should have seizure provisions unless there is some controlling element over it. I believe it is worthwhile to have to go before a judge before you get a seizure proceeding. You are not only thinking of the safety of the people, you are thinking of the rights of the person whose goods are being seized too. And I like the controlling element of the judge there.

Mr. Hogarth: Might I just put this proposition before you. A woman comes before a magistrate with a complaint under Section 717.

Mr. Turner (Ottawa-Carleton): Yes.

Mr. Hogarth: It provides that:
Section 717

(1) Any person who fears that another person will cause personal injury to him or his wife or child or will damage his property may lay an information...

She complains that her husband not only beat her up but he threatened on three occasions to shoot her with his Thompson submachine gun which he has properly registered. In any event, it seems to me, Mr. Minister, that the magistrate in addition to binding him by a recognizance, as provided in subsection (3) of Section 717, should be able to put in that recognizance an order or make an order under proposed Section 95 before the use of the weapon takes place. And I really cannot see why that woman should have to spur the Attorney General to move a Superior Court judge to make an order.

Mr. Turner (Ottawa-Carleton): Yes, but she would have the right at the time to take advantage of proposed Section 98G.

Mr. Hogarth: No, but 98G involves the Attorney General making an application.

Mr. Turner (Ottawa-Carleton): Well, a Crown prosecutor, in effect.

Mr. Hogarth: No, but, Mr. Minister, this is to a Superior Court judge.

Mr. Turner (Ottawa-Carleton): Yes, but, you know, under 717 somebody is laying an information.

[Interprétation]

M. Hogarth: Je sais, monsieur le ministre, il faut que le procureur général fasse une demande à un juge de la Cour suprême, dans ces cas, il me semble...

M. Turner (Ottawa-Carleton): Cela veut dire que le procureur de la Couronne s'adresse au juge. Je ne crois pas qu'il devrait y avoir des dispositions relatives à la saisie sans qu'il y ait un contrôle quelconque. Je pense qu'il vaut mieux aller devant un juge pour obtenir un ordre de saisie. Vous ne songez pas à la sécurité des gens mais à leurs droits. J'approuve ce contrôle qu'exercerait le juge.

M. Hogarth: Je vous propose ceci. Une femme vient devant un tribunal pour porter une plainte en vertu de l'article 717.

M. Turner (Ottawa-Carleton): Oui.

M. Hogarth: On dit:

Article 717 (1) Toute personne qui craint qu'une autre personne lui infligera, ou à son épouse ou son enfant, des blessures personnelles ou endommagera ses biens peut soumettre...

Elle se plaint que, non seulement son mari l'a battue, mais il l'a menacée de la tirer avec sa mitraillette pour laquelle il a un permis. De toute façon, il me semble, monsieur le ministre, que le magistrat en plus de le sommer, sous une caution personnelle, d'observer une bonne conduite en vertu de l'article 717(3), devrait avoir l'autorisation d'ajouter à cette caution personnelle, un ordre en vertu de l'article 95 avant que la personne puisse se servir de cette arme. Et je ne vois pas pourquoi cette femme doive pousser le procureur général à demander à un juge de la Cour suprême d'émettre un mandat.

M. Turner (Ottawa-Carleton): Elle peut en même temps se prévaloir de l'article 98G.

M. Hogarth: Non, monsieur le ministre, cet article exige que ce soit le procureur général qui en fasse la demande.

M. Turner (Ottawa-Carleton): Un procureur de la Couronne en fait.

M. Hogarth: Non, mais, monsieur le ministre, c'est à un juge de la Cour suprême.

M. Turner (Ottawa-Carleton): Oui, mais d'après l'article 717, il y a une personne qui porte une accusation.

[Text]

Mr. Hogarth: Yes.**Mr. Turner (Ottawa-Carleton):** That does not indicate that the facts are necessarily true at that stage.**Mr. Hogarth:** No, no. I mean upon the making of the order. You see, you provide in proposed Section 95 that where he is convicted of an offence involving the use of the weapon, the magistrate may make such an order.**Mr. Turner (Ottawa-Carleton):** That is after an offence, that is clear.**Mr. Hogarth:** Yes. Why not when he makes an order under 717, which is preventative?**Mr. Turner (Ottawa-Carleton):** All right, we will accept that.**Mr. Hogarth:** Thank you.**Mr. Turner (Ottawa-Carleton):** We will stand it and draft it and submit it to the Committee tomorrow to see what the Committee thinks of it. In other words, Mr. Woolliams, we are willing to phrase it somewhat along these lines, but I would like the law officers to take a whack at drafting it, just as we drafted for Mr. McCleave's use the potential amendments he wants to make on the matter he brought up yesterday. He already has that in his possession.**Mr. McCleave:** Mr. Minister at the same time the law officers may take a crack at defining ammunition, because after all, this is an indictable offence, to carry ammunition.**Mr. Turner (Ottawa-Carleton):** We will look at that point.**Mr. McCleave:** I think it can be defined.**Mr. Turner (Ottawa-Carleton):** I do not want them to stay up all night, but that is going to be a tough one. Proposed Section 95 (1) would read somewhat like this: "Where a person is convicted of an offence involving the use, carriage or possession of any firearm or ammunition or an order is made under Article 17." But I would like to look at the wording there.**Mr. Woolliams:** On the subject of ammunition, I do not want to take very much time on this, but first of all you have to find out what you are intending to do. I think what you are intending to do is to say what is used as ammunition in firearms. It might be ammunition in another field. I use as an illustration a

[Interpretation]

M. Hogarth: Oui.**M. Turner (Ottawa-Carleton):** Cela ne veut pas dire que les faits sont établis à ce moment-là.**M. Hogarth:** Je parle de lorsque le mandat a été émis. Dans l'article 95 on dit que lorsqu'une personne a déjà été condamnée pour une offense impliquant l'usage de l'arme à feu le magistrat peut délivrer ce mandat.**M. Turner (Ottawa-Carleton):** Après qu'il y a eu un délit, c'est clair.**M. Hogarth:** Oui. Mais pourquoi pas alors lorsqu'il délivre un mandat en vertu de l'article 717 qui est préventif?**M. Turner (Ottawa-Carleton):** D'accord, je concède cela.**M. Hogarth:** Merci.**M. Turner (Ottawa-Carleton):** Nous allons réserver l'article, le rédiger, et le présenter au Comité demain pour voir ce que le Comité en pense. En d'autres mots, monsieur Woolliams, nous sommes d'accord pour le rédiger en ce sens, mais nous aimerions que nos fonctionnaires puissent y mettre la main, comme ce fut las cas pour ces amendements que monsieur McCleave songe à présenter.**M. McCleave:** Ces fonctionnaires pourraient peut-être, en même temps, tenter de définir le mot «munitions», puisqu'il est interdit de transporter des munitions.**M. Turner (Ottawa-Carleton):** Nous y verrons.**M. McCleave:** Je crois qu'il est possible de définir ce mot.**M. Turner (Ottawa-Carleton):** Je ne voudrais pas qu'ils passent la nuit debout. Ce ne sera pas une tâche facile. Le texte du paragraphe (1) de l'article 95 pourrait se lire à peu près ainsi: «Lorsqu'une personne est déclarée coupable d'une infraction comportant l'utilisation, le port ou la possession d'une arme à feu ou de munitions, ou lorsqu'une ordonnance est émise en vertu de l'article 17.» Mais je voudrais scruter le tout de plus près.**M. Woolliams:** Je n'entends pas parler trop longuement de cette question des munitions, mais il vous faut tout d'abord décider ce que vous avez l'intention de faire. Je crois que ce que vous avez l'intention de faire c'est d'établir ce qui sert de munitions dans les armes à feu. Il pourrait s'agir d'autres munitions. Pre-

[Texte]

beanshooter or a peashooter. What you are really concerned with is not a beanshooter or a peashooter. You are worried about people carrying or having firemans and ammunition which is discharged by firearms. I think that is what you are really interested in.

Mr. Turner (Ottawa-Carleton): That is right.

Mr. Woolliams: One thing that does concern me a little in all these sections you are doing now is this option, whether it is going to be an indictable offence or a summary conviction. This election is left with the Crown.

Mr. Hogarth said he held a position as a Crown Counsel. I have never acted for the Crown in any way, but it does seem to me in my experience that the Crown exercises that discretion. They often use it in a matter where there is some negotiation between defence and Crown. This goes on in court. There is some negotiation. If they reduce it to a summary conviction, the fellow will likely plead guilty.

All these sections concern me. The same thing with assault or several other charges under the Code. I cannot think of one just now where you can make this election. I think it is putting too much power in the Crown. Impaired driving is another charge.

It concerns me, because they will lay the indictable offence. Then they fingerprint them, and go through the whole stage. They are liable to five years imprisonment and then if it is a summary conviction—what is the penalty for a summary conviction there? Six months. Well, there is an awful difference.

Mr. Turner (Ottawa-Carleton): Sure there is.

Mr. Woolliams: Here is another one. Indecent exposure is another indictable offence on summary conviction. I have seen them negotiate on that one.

Mr. Turner (Ottawa-Carleton): The Code, you see, provides for each offence, either that it is summary, in which case there is a six months maximum, or it is indictable. Then the indictable depends on what the maximum penalty is in the Code. There has to be some flexibility there. The law officer of the Crown, or the Crown prosecutor or the provincial attorney general, weighs the gravity of the factual situation within the offence and decides which option ought to be taken. They need that flexibility.

[Interprétation]

nous l'exemple du tire-pois. Ce n'est pas le tire-pois qui vous intéresse. Ce qui vous intéresse, ce sont ces personnes qui transportent ou possèdent des armes à feu et des munitions utilisées dans les armes à feu.

M. Turner (Ottawa-Carleton): C'est bien cela.

M. Woolliams: L'une des choses qui m'inquiètent concerne ce choix entre l'acte criminel et l'infraction punissable sur déclaration sommaire de culpabilité. Cette décision appartient à la Couronne.

M. Hogarth nous a dit qu'il avait déjà été procureur de la Couronne. Je n'ai jamais agi au nom de la Couronne mais il me semble que ce choix est toujours laissé à la Couronne. On y a recours lorsqu'il y a négociations entre la poursuite et la défense. Et si l'accusation est réduite au niveau d'une infraction punissable sur déclaration sommaire de culpabilité, il est probable que l'individu reconnaîtra sa culpabilité.

La même chose se produit au sujet des accusations d'assaut ou d'autres accusations prévues au Code. Aucun exemple ne me vient à l'esprit, mais je crois que c'est accorder trop de pouvoirs à la Couronne. Conduire un véhicule alors que les facultés sont affaiblies est une autre de ces accusations où il peut y avoir choix.

Ce qui m'inquiète c'est qu'on accusera d'abord l'individu d'un acte criminel. Il y aura prise d'empreintes digitales et tout ce qui s'en suit. L'infraction peut entraîner une peine d'emprisonnement de cinq ans. Si l'infraction est punissable sur déclaration sommaire de culpabilité... Quelle est la peine? Six mois. Eh bien la différence est énorme.

M. Turner (Ottawa-Carleton): Évidemment.

M. Woolliams: En voici un autre. Les actes de grossière indécence peuvent être considérés actes criminels ou punissables sur déclaration sommaire de culpabilité. J'ai été témoin de négociations à ce sujet.

M. Turner (Ottawa-Carleton): Le Code prévoit que chaque offense peut être soit punissable sur déclaration sommaire de culpabilité, ce qui entraîne une peine maximum de six mois, soit un acte criminel. Il faut une certaine flexibilité. Les représentants de la Couronne, ou son procureur ou le procureur général d'une province évalue la gravité de chaque cas et décide comment l'accusation sera portée. Cette flexibilité est nécessaire.

[Text]

• 1605

This Code assumes two things. First of all, that the law officers of the Crown, either at the provincial level or the federal level, or at the municipal level with a Crown prosecutor, are going to use their best judgment in the interest of justice, recognizing the rights of the people on the one hand and the rights of the accused on the other, to use the option that in their opinion best suits the circumstances of the case. That is the first one.

The second assumption we have to make is that the peace officers charged with enforcing this document do so with reasonable and probable cause, using their best judgment. You have to make those two assumptions. There are avenues of appeal that are available to someone who finds the processes against him abusive.

Mr. Woolliams: With the greatest respect to you, Mr. Minister, I do not know of any avenue of appeal where the Crown decides to go by an indictable offence.

Mr. Turner (Ottawa-Carleton): You cannot, no, that is right.

Mr. Woolliams: Actually you are permitting two kinds of trial here.

Mr. Turner (Ottawa-Carleton): You have the preliminary inquiry, of course, which gives him...

Mr. Woolliams: May I speak to this point just briefly. Actually what the Minister has said would be beautiful as an ideal. It does not in reality work out quite that way. There are two trials that take place, in practice. The Crown, which is often a police officer, decides whether it is going to be a charge of indictable offence or summary conviction. He uses the discretion which the Minister has spoken about, and he comes to a conclusion. But the poor accused has no defence against that discretion at all. He has to rely on this idealism which the Minister has painted.

He said basically the Crown Counsel is always going to be absolutely scrupulously fair and the police are going to be absolutely scrupulously fair. In my 25 years of experience at the bar as a defence counsel I have not found them just quite that good. In fact, I am going to go further. We have had police officers whose credibility has been tested in courts as ordinary witnesses.

Now if their credibility—my good friend over here spoke about prosecution—I am not going to take the time of the Committee, but I could discuss with you several murder trials in which basically the jury came to the conclusion of acquittal because they could not

[Interpretation]

Le Code présume de deux choses. D'abord que les représentants de la Couronne, que ce soit au niveau municipal, provincial ou fédéral, feront preuve de jugement dans l'intérêt de la justice, en reconnaissant les droits du public et ceux de l'accusé lorsque viendra le temps de décider de la façon de porter l'accusation.

Ensuite, que les représentants de la Couronne ont raison d'agir comme ils le font. Il y a possibilité d'appel pour celui qui croit avoir été lésé.

M. Woolliams: Sauf votre respect, monsieur le ministre, il est impossible d'en appeler lorsque la Couronne décide qu'il s'agit d'un acte criminel.

M. Turner (Ottawa-Carleton): Vous avez raison, ce n'est pas possible.

M. Woolliams: Donc, vous permettez la tenue de deux types différents de procès.

M. Turner (Ottawa-Carleton): Il y a l'enquête préliminaire, évidemment, au cours de laquelle...

M. Woolliams: Puis-je intervenir. Ce que le ministre a dit serait idéal. Mais ça ne fonctionne pas tout à fait comme ça. Il y a, en fait, deux procès. La Couronne, décide s'il s'agit d'un acte criminel ou d'une infraction punissable sur déclaration sommaire de culpabilité. En se servant de cette possibilité dont le ministre a parlé, on en arrive à une conclusion. Mais le pauvre accusé n'a aucun recours. Il doit se fier à cette situation idéale qu'a peinte le ministre.

Il a déclaré que le procureur de la Couronne et la police seront toujours scrupuleusement justes. Mes 25 années d'expériences comme procureur de la défense m'ont permis de voir que ce n'est pas tout à fait le cas. J'irai même plus loin et je dirai que la crédibilité de certains policiers a dû être vérifiée en cour.

Je ne veux pas faire perdre leur temps aux membres du Comité mais je pourrais citer plusieurs procès pour meurtres au cours desquels le jury a acquitté le prévenu parce qu'il ne pouvait croire les dépositions des policiers. Si ces témoins sont du même type que ceux

[Texte]

believe police officers. Now, if they are that kind of witness, those same kind of people exercising the discretion I am discussing this afternoon, we need a little more protection. I am concerned about it. You are creating so many of these offences.

Mr. Hogarth: Mr. Chairman, may I speak on this?

Mr. Woolliams: Yes, I am finished.

Mr. Hogarth: With the greatest respect to my friend, it does not really matter which way the Crown chooses to proceed in the sense that for these offences the accused is given the option of a summary trial, or a speedy trial before the country court judge, or a trial by jury. That makes a difference. But insofar as the penalty is concerned, surely the only thing that the magistrate is going to be concerned with is what the facts of the case were, and he would give the same penalty regardless of whether it went by indictment or went on summary conviction. The magistrate could give a much greater penalty by way of indictment, but he would not if the facts did not warrant it. But the big thing about these optional offences, and I would like to support the Minister in this regard, is that when they are optional, you can include, in an indictment before the higher court, the indictable offence as a second count.

Take, for instance, Section 91. Suppose the first count in the indictment was attempted murder, and the case was touch-and-go so far as the evidence was concerned. You could add a second count in that indictment of being in the possession of a restricted weapon for which there was no registration certificate. The point is that the jury could return a verdict on the second count because you can include that in the indictment because it is an indictable offence. If it were only a summary conviction offence, you could not include it.

The Chairman: Gentlemen, this is most interesting and enlightening.

Mr. Woolliams: Mr. Chairman, I know what you are going to do. I just want to say one thing. I agree with Mr. Hogarth as to what might happen in penalty, but there is a great difference. Supposing there was a suspended sentence, whether it was preceded by indictment or by summary conviction. There would be no difference as to penalty. But there is a lot of difference when looking up a man's record in this country. If he has been found guilty of an indictable offence and fingerprinted, he is then a criminal, and he has a criminal record. This is quite different from one who has been found guilty of a summary conviction.

[Interprétation]

qui décideront du genre d'accusations qui seront portées, je crois que nous avons besoin d'un peu plus de protection. Tout ceci m'inquiète.

M. Hogarth: Monsieur le président, vous m'accordez la parole?

M. Woolliams: Oui, j'ai terminé.

M. Hogarth: Personnellement je crois que tout ceci n'a pas tellement d'importance puisque le prévenu peut, en définitive, choisir le genre de procès qu'il subira, savoir, devant un juge seul ou un jury. Là il y a une différence. Pour ce qui est de la peine, il est évident que le magistrat ne se basera que sur les faits qui auront été soumis au cours du procès et que cette peine sera la même qu'il s'agisse d'un acte criminel ou d'une infraction punissable sur déclaration sommaire de culpabilité. Le juge peut imposer une peine plus sévère s'il s'agit d'un acte criminel mais il ne peut le faire si la preuve est insuffisante. Ce qui importe ici, et je suis d'accord avec le ministre, c'est que lorsqu'il y a choix, il est possible de présenter cette accusation en deuxième instance devant un tribunal supérieur.

Prenons, par exemple, l'article 91. Supposons qu'il s'agisse d'une accusation de tentative de meurtre et que la preuve ne soit pas très concluante. Il serait possible d'ajouter une nouvelle accusation, celle de possession d'une arme restreinte sans certificat d'enregistrement. Le jury pourrait rendre un verdict de culpabilité dans ce deuxième cas parce qu'il s'agit d'une offense criminelle. S'il s'agit d'une infraction punissable sur déclaration sommaire de culpabilité il serait impossible d'ajouter la deuxième accusation.

Le président: Je trouve tout ceci très intéressant et enrichissant, messieurs.

M. Woolliams: Je sais ce que vous allez faire, monsieur le président, mais permettez-moi d'ajouter un mot. Je suis d'accord avec monsieur Hogarth, au sujet de la peine, mais il y a une différence. Supposons que le juge accorde au prévenu une sentence suspendue. La punition serait la même quelle qu'ait été la façon de procéder. Mais regardez le dossier de cet homme. S'il a été trouvé coupable d'un acte criminel, on a pris ses empreintes digitales et il possède un dossier criminel. Il y a une énorme différence avec celui qui aurait été trouvé coupable d'une offense punissable sur déclaration sommaire de culpabilité.

[Text]

[Interpretation]

• 1610

Mr. Turner (Ottawa-Carleton): You are not quite right there, because if it is optional and the Crown can proceed either by way of summary proceeding or by indictment, the Identification of Criminals Act applies to both and they will still be fingerprinted at that stage, and the record situation would apply to both. In other words, to cure what you are trying to cure, we have to amend the Identification of Criminals Act, which is what I understand the Solicitor General is reviewing. That will not solve your problem.

Mr. Woolliams: Well, when you take a look at a man's record and he has been found guilty of several summary convictions, it is an entirely different thing than if he has been found guilty of several indictable offences. That is why this kind of legislation unnerves me. I think it is usurping civil rights. I think it is putting a little too much power in the Crown. You are having two trials, one without a defence at all at the discretion of the Crown, and then you have to have a defence for whatever they decide on.

Mr. Turner (Ottawa-Carleton): Mr. Chairman, may I suggest to Mr. Woolliams that I think, as I said, we have to rely on the general good judgment of those who are in charge of the prosecutions in this country, and in the police. You know, we are all human. I think it would be far more prejudicial to those brought up to the bar of justice if there were not the flexibility available here because of the great range in gravity of the factual situations that can fall under any particular offence, and if we were to say that that is indictable and only indictable and that was a maximum penalty or a minimum penalty or that was just summary, I think there would be far more injustice meted out than under the flexible provisions now available in the Code.

Mr. Woolliams: My last thought on it is this. Here is an example of the kind of discretion the Minister is asking us to respect. There are dozens of offences in the metropolitan areas—and they apply all over—for which the police could either issue a summons or make an arrest, and with the kind of discretion that is exercised in this nation what do they do? They make an arrest.

Mr. Turner (Ottawa-Carleton): That is a different point.

Mr. Woolliams: All right, but it is the same kind of discretion. That is the kind of rights that you are placing in these powerful police officers and officers of the Crown, and

M. Turner (Ottawa-Carleton): Vous faites légèrement erreur car si la Couronne a le choix de procéder de l'une ou l'autre façon la *Loi sur l'identification des criminels* s'applique dans les deux cas et le prévenu devra se soumettre au processus de prise des empreintes digitales et son dossier, dans les deux cas, sera identique. Pour régler le problème que vous désirez régler, il faudra modifier la *Loi sur l'identification des criminels*, ce qu'étudie présentement le solliciteur général.

M. Woolliams: Si vous consultez le dossier d'un individu qui a été condamné à plusieurs reprises pour des offenses punissables sur déclaration sommaire de culpabilité, la situation est loin d'être la même que s'il avait été trouvé coupable de plusieurs actes criminels. Ceci ne me plaît guère. Je crois que nous empiétons sur les droits des individus, et que nous accordons trop de pouvoirs à la Couronne.

M. Turner (Ottawa-Carleton): Puis-je répéter à monsieur Woolliams, monsieur le président, que nous devons nous fier au bon jugement de ceux qui sont chargés de la mise en accusation et au bon jugement des policiers. Nous sommes tous humains, vous savez. Il ne faut pas l'oublier, je crois que ce serait beaucoup plus préjudiciable pour ceux qui sont poursuivis en justice s'il n'y avait pas cette souplesse à cause du vaste éventail des situations réelles qui tombent sous une disposition donnée, et si l'on dit que tel acte constitue un délit qui mérite la peine maximale ou minimale, ou simplement une déclaration sommaire de culpabilité, je crois qu'il y aurait beaucoup plus d'injustices en vertu des dispositions souples du nouveau Code.

M. Woolliams: Une dernière idée à ce sujet. Voici un exemple de la discrétion que le ministre nous demande de respecter. Il y a des douzaines d'infractions qui se produisent dans les zones métropolitaines pour lesquelles le policier peut émettre une citation ou faire une arrestation avec toute la discrétion voulue. Qu'est-ce qui se passe en général? On arrête les gens.

M. Turner (Ottawa-Carleton): C'est autre chose.

M. Woolliams: Oui, mais le même genre de discrétion. C'est le genre de pouvoirs que vous remettez aux policiers et aux représentants de la Couronne. Mais ils procèdent ainsi

[Texte]

as a result they do this because it is much easier to find the fellow when he is in jail. Also, when he gets into jail he is more likely to plead guilty than if he went home with a summons in his pocket. That has been my experience. It may sound very hard language but anybody around this table who has done any defence work knows that is the experience you have in that field. As far as I am concerned, I just do not like this kind of discretion that is being exercised and I think the Department is somewhat—and I say this with the greatest respect to you gentlemen—idealistic in the sense that it has not gone out in the practical field and seen this. I have known of judges who were appointed who were Crown Counsel, and they always believe policemen. They are always honest. But if you have a man with a little wider experience, he starts to weigh the words of those police officers. He finds they are human they can make mistakes. This is what I am complaining about.

Mr. Turner (Ottawa-Carleton): Your last remark, Mr. Woolliams, does not really apply to the Code at all. It applies to detention before trial. There is a lot to be said for having more offences dealt with by summons than by detention before trial, and I agree with you there. We will be looking into that when we look into the question of bail. I might say, though, that we are not dealing here with all idealists. For instance, Mr. Scollin has probably had more cases before the police courts in Winnipeg than anybody who is still in Winnipeg.

Mr. Woolliams: I would be the first to apologize...

The Chairman: Gentlemen, is it agreed that...

Mr. Hogarth: This backfires badly. In Vancouver they started to lay impaired driving charges by indictment. Everybody elected a jury trial and everybody got acquitted, so they stopped.

The Chairman: Is it agreed that we stand proposed Section 95?

Clause 6 (1), proposed Section 95 stood.

On clause 6 (1), proposed Section 96—Record of transactions in restricted weapons.

Mr. Chappell: I would like to make a comment, Mr. Chairman.

[Interprétation]

parce que c'est beaucoup plus facile que de trouver la personne quand elle est en prison. Et quand elle est en prison, la personne est beaucoup plus susceptible de se déclarer coupable, que si elle rentrerait chez elle avec sa citation. C'est ce que j'ai constaté par mon expérience. Excusez mon langage, mais si certains d'entre vous ont entrepris la défense de personnes, vous savez que c'est l'expérience que vous avez eue. En ce qui me concerne, je n'aime pas ce genre de pouvoir de discrétion et je crois que le ministère, avec le plus grand respect que j'ai pour vous, messieurs, est idéaliste en ce sens que vous n'avez pas d'expérience pratique. Je connais des juges qui, avant d'être nommés, étaient avocats de la Couronne et qui se fiaient toujours aux policiers. Ils sont toujours honnêtes. Et pourtant si vous avez quelqu'un qui a plus d'expérience, il sait en prendre et en laisser. Ce sont des hommes qui peuvent faire des erreurs. C'est ce à quoi je m'objecte.

M. Turner (Ottawa-Carleton): Votre dernière remarque ne s'applique pas du tout au Code, monsieur Woolliams. Elle vise l'emprisonnement avant le procès. Je suis d'accord que les citations en justice sont souvent préférables à l'emprisonnement avant le procès. Nous allons nous pencher là-dessus lorsque nous parlerons des cautionnements. Mais nous ne sommes pas tous des idéalistes. M. Scollin a probablement présenté plus de cas en cour à Winnipeg que n'importe qui dans cette ville.

M. Woolliams: Je serai le premier à présenter des excuses.

Le président: Messieurs, il est convenu que...

M. Hogarth: Ce n'est pas si simple à Vancouver, pour les cas de conduite en état d'ivresse, on procédait d'abord par inculpation. Mais tout le monde réclamait des procès devant un jury et le monde a été acquitté. Ils ont donc abandonné cette pratique.

Le président: Est-on d'accord pour réserver l'article 95?

L'article 6 (1) du Bill sur l'article 95 de la Loi est réservé.

L'article 6(1) du Bill sur l'article 96 de la Loi—Registre des opérations relatives aux armes.

M. Chappell: Je voudrais faire un commentaire.

[Text]

The Chairman: On Section 96? We are standing Section 95.

Mr. Chappell: No, it is involved in two or three sections. We suggest that you look at the definition of the word "ammunition". With respect, I think I should remind you that in interpreting it it is always interpreted within the context of the section, and it follows "firearm or ammunition". I think it is quite clear that it is ammunition for a firearm and I do not think it is necessary to go through the whole Code to see if the definition would fit.

The Chairman: Section 96.

Mr. Hogarth: Mr. Chairman, I may be wrong but as I read Section 96(2) there is no permit required to manufacture a restricted weapon. Am I correct in that?

Mr. Turner (Ottawa-Carleton): Yes, just the retailer.

Mr. Hogarth: A pistol can be...

Mr. Turner (Ottawa-Carleton): The retailer, repairer and pawnbrokers.

Mr. Hogarth: A pistol can be manufactured in the smallest machine shop and it would be a straight defence to say, "I am not possessing this thing other than for the purpose that I have just manufactured it". Surely we should have permits to manufacture if we have permits to sell, permits to repair and permits for the taking of the weapon in pawn. Surely we should have a permit to manufacture as well. I cannot understand why that has been left out.

Mr. Turner (Ottawa-Carleton): Mr. Hogarth, we considered this at the time it was being drafted and the weapon reaches the potential contact with the public through the retailer. I suppose we could say wholesaler as well, but the manufacturer delivers directly to a retailer or a wholesaler of weapons. The risk is pretty minimal here.

Mr. Hogarth: I appreciate that but why not make a blanket provision with respect to restricted weapons that under all circumstances there must be a permit or a registration certificate, one or the other, and then it does not leave the defences open that might arise.

Mr. Turner (Ottawa-Carleton): There is no problem, of course, in respect to keeping the records. Under Section 96(1) the manufacturer is covered on the record section.

Mr. Hogarth: Yes. You said all he has to do is send in a record of a pistol he has manufactured.

[Interpretation]

Le président: Sur l'article 96? On a réservé l'article 95.

M. Chappell: Il s'agit de deux ou trois articles. Je propose qu'on étudie la définition du mot «munition». Sauf votre respect, je vous rappelle que l'interprétation se fait toujours dans le contexte de l'article où l'on parle «d'armes à feu ou de munitions». Il est évident qu'il s'agit de munitions pour des armes à feu. Je ne crois pas qu'il soit nécessaire d'examiner l'ensemble du Code pour voir si la définition est bonne.

Le président: Article 96?

M. Hogarth: Pourquoi à l'article 96 (2) n'exige-t-on pas un permis pour fabriquer des armes à autorisation restreinte? Ai-je raison de croire que c'est le cas?

M. Turner (Ottawa-Carleton): Oui, mais le détaillant...

M. Hogarth: On peut fabriquer...

M. Turner (Ottawa-Carleton): Le détaillant, l'armurier et les prêteurs sur gage.

M. Hogarth: On peut fabriquer un pistolet dans un petit atelier et la personne peut se défendre en disant: «Je ne possède pas cette arme, je ne fais que la fabriquer». Il faudrait certainement exiger un permis pour fabriquer si nous exigeons un permis pour réparer, pour vendre ou pour prendre un gage. Je crois qu'il faudrait aussi un permis pour fabriquer des armes. Je ne comprends pas pourquoi on ne l'a pas inclus.

M. Turner (Ottawa-Carleton): Nous y avons songé au moment de la rédaction. L'arme est offerte au public par le détaillant, et le grossiste aussi, mais le fabricant fait ses livraisons directement au détaillant et au grossiste. Il y a peu de risques.

M. Hogarth: Je m'en rends compte, mais pourquoi ne pas avoir une disposition générale concernant les armes à autorisation restreinte de sorte que dans toutes des circonstances il faudrait un certificat d'enregistrement ou un autre. Ainsi on ne laisserait pas la porte ouverte à ce genre de défense.

M. Turner (Ottawa-Carleton): Il n'y a pas de problème en ce qui concerne la comptabilité. Le fabricant tombe sous le coup de l'article 96(1) à ce sujet.

M. Hogarth: Oui. Vous dites que tout ce qu'il a à faire est de déclarer qu'il a fabriqué un pistolet.

[Texte]

Mr. Turner (Ottawa-Carleton): The main point, though, is to keep a record of how many weapons are put into distribution from the manufacturer. The only person who deals with the purchaser is the retailer, the repairer or the pawnbroker. We thought it was a minimal risk.

Clause 6 (1), proposed Section 96 agreed to.

On Clause 6 (1), proposed Section 97—Permit to possess restricted weapon.

Mr. MacGuigan: Mr. Chairman, I have several points I would like to bring up on Section 97. First of all, it seems to me that in Section 97(2)(c) privately-owned ranges are excluded whether they are adequately supervised and safe ranges or not, and whether they are outdoors or indoors. What is the reason for this? My second point—and this is a matter I suspect we will get into more fully in a few moments—is that I am somewhat troubled by some of the discretion which is given with regard to the issuing of permits but I assume that the discretion which is referred to in Section 97(2) (d) is the same discretion which is described later on in the section and we can deal with it when we come to it, and the conditions mentioned in paragraph (2) (d) are the same conditions which are referred to later in paragraph (9).

Mr. Turner (Ottawa-Carleton): Yes. This point came up when Mr. Passmore arrived. I am just trying to compare it with 195. Your point, Mr. MacGuigan, is covered in the next subparagraph, which would permit what you...

Mr. MacGuigan: This would permit the use of private ranges.

Mr. Turner (Ottawa-Carleton): Yes. That was amended from 195. The point was brought up by the Shooting Federation.

Mr. MacGuigan: You mean the question of discretion on private ranges.

Mr. Turner (Ottawa-Carleton): Private ranges.

Mr. MacGuigan: Yes. I want to discuss the larger subject of the discretion in paragraph 9, but perhaps other members will want to raise other points before we get to that.

The Chairman: All right.

Mr. McCleave: I have a question relating to Section 97(7), and it hinges on this earlier motion that...

[Interprétation]

M. Turner (Ottawa-Carleton): Le principal est de savoir combien d'armes sont mises sur le marché par le fabricant. Mais en principe, le public n'a affaire qu'au détaillant à l'armurier et au prêteur à gage. Nous avons pensé que c'était vraiment un risque minimal.

L'article 6(1) du Bill relatif à l'article 96 du Code est adopté.

L'article 6(1) du Bill relatif à l'article 97 du Code—Permis de posséder une arme à autorisation restreinte.

M. MacGuigan: Je voudrais soulever plusieurs points relatifs à l'article 97. Il me semble que les champs de tir privés sont exclus même s'ils sont bien gérés et sans danger. Pourquoi? Une autre question, que nous aborderons en plus de détails tout à l'heure, concernant la discrétion laissée aux autorités quant à la livraison des permis mais je suppose que la discrétion mentionnée à l'article 97 2(d) est la même qui figure un peu plus loin dans l'article et nous pourrions en discuter alors car les conditions mentionnées à l'article 97 2(d) sont les mêmes qui sont mentionnées à l'alinéa 9.

M. Turner (Ottawa-Carleton): Cette question a été posée quand M. Passmore est arrivé. J'essaie de le comparer au Bill 195. Ce que vous dites, monsieur MacGuigan est couvert au sous-alinéa suivant, qui autorise ce que vous voulez.

M. MacGuigan: Cela autorisera l'usage de champs de tir privés.

M. Turner (Ottawa-Carleton): Oui. Nous avons modifié l'article du Bill 195. La question a été soulevée par la Fédération du tir.

M. MacGuigan: Voulez-vous parler du pouvoir de discrétion laissé quant aux champs de tir privés?

M. Turner (Ottawa-Carleton): Les champs de tir privés.

M. MacGuigan: Oui, je voudrais discuter de cela, mais peut-être que d'autres députés voudront soulever d'autres questions.

Le président: D'accord.

M. McCleave: Je voudrais poser une question sur l'article 97(7) à partir de la motion présentée plus tôt.

[Text]

The Chairman: A point of order.

Mr. Hogarth: On a point of order, Mr. Chairman, should we not go through Section 97 by dealing with Paragraph (1), then Paragraph (2), then Paragraph (3), and so on, rather than going straight to Section 97(7)?

Mr. Woolliams: Speaking to that point of order just for a moment, I think perhaps the answer to it—and it may be that the Minister was about to answer it—is that there is an appeal to the magistrate, if I have read the Act correctly, and does that not give us our protection? That is on page 16.

Mr. Turner (Ottawa-Carleton): I think we have to be clear here, Mr. Woolliams. There is an appeal from a revocation of a permit only.

Mr. Woolliams: But not if they refuse.

Mr. Turner (Ottawa-Carleton): That is right.

Clause 6(1), proposed Section 97(1) (a) and (b) agreed to.

On Clause 6(1)—proposed Section 97(2) (a)

Mr. Hogarth: Why is it that I am limited, in making application for my pistol, to protecting only my life? Could I not under certain circumstances get a pistol to protect other lives? I might want to protect my wife some day, if she is threatened.

Mr. Turner (Ottawa-Carleton): You might want to protect yourself from your wife, too.

Mr. Hogarth: I will agree that that is included. But should that not be broadened to protect life or property? Why should it be confined to the applicant's life?

Mr. Turner (Ottawa-Carleton): We will accept that. We will try to draft that overnight to take into account your change.

Mr. Hogarth: You just have to take out the word "his", so that it will read, "To protect life or property."

Mr. Turner (Ottawa-Carleton): Yes, then the permit can spell it out. We will just strike the word "his".

Mr. Hogarth: I propose the following amendment: that the word "his" be taken out of proposed section 97(2)(a).

Mr. Turner (Ottawa-Carleton): We will just strike out the word "his". That would allow

[Interpretation]

Le président: Un point d'ordre.

M. Hogarth: Sur un point d'ordre, monsieur le président. Est-ce qu'on ne devrait pas étudier l'article 97 en suivant l'ordre des paragraphes?

M. Woolliams: Pour répondre à ce point d'ordre, je crois, et le ministre allait le dire qu'il y a un droit d'appel à un magistrat, si j'ai bien lu la Loi. Est-ce que ce n'est pas là la protection que nous recherchions? A la page 16.

M. Turner (Ottawa-Carleton): N'embrouillons pas les choses, monsieur Woolliams. Il y a droit d'appel que pour les cas de révocation de permis.

M. Woolliams: Pas s'ils refusent.

M. Turner (Ottawa-Carleton): C'est exact.

L'article 6(1) du Bill relatif à l'article 97(1) (a) et (b) du Code est adopté.

Article 6(1) du Bill relatif à l'article 97(2)(a) du Code.

M. Hogarth: Pourquoi est-on limité, en demandant un permis, à protéger uniquement sa propre vie? Y-a-t-il des circonstances où je pourrais avoir une arme pour protéger d'autres vies, par exemple celle de ma femme?

M. Turner (Ottawa-Carleton): Vous voudrez peut-être vous protéger contre votre femme, un jour.

M. Hogarth: J'accepte que cela soit compris dans la loi. Mais ne faudrait-il pas élargir cette définition pour y inclure la vie et la propriété? Pourquoi se limiter à la vie de celui qui fait une demande de permis?

M. Turner (Ottawa-Carleton): Nous allons l'accepter. Nous allons essayer de rédiger à nouveau cet article ce soir, pour y apporter la modification que vous proposez.

M. Hogarth: Vous n'avez qu'à supprimer les mots «sa» et «ses», ce qui donnera: «pour protéger vie et biens».

M. Turner (Ottawa-Carleton): Oui. Alors, le permis pourra le préciser. Nous allons tout simplement supprimer les mots «sa» et «ses».

M. Hogarth: Je propose l'amendement suivant: qu'on supprime les mots «sa» et «ses» du projet d'article 97(2)(a).

M. Turner (Ottawa-Carleton): Nous allons tout simplement supprimer les mots «sa» et

[Texte]

him to protect the life of his family and so on. Let us draft this in both English and French and then bring it back to you. I do not think we want "des biens", we want "ses biens" it is still his property.

Clause 6—proposed Section 97(2)(a) stood.

Mr. Turner (Ottawa-Carleton): We will prepare an amendment and present it tomorrow.

Clause 6—proposed Section 97(2)(b) agreed to.

On Clause 6, proposed Section 97(2)(c) and (d).

Mr. Hogarth: What is the difference, Mr. Minister, between (c) and (d) in substance. Why can they not be merged into one?

Mr. Turner (Ottawa-Carleton): We have two separate situations here, Mr. Hogarth. Subparagraph (c) contemplates the shooting club approved by the provincial attorney-general. So that once the shooting club is approved by the attorney general you allow more flexibility, more latitude to the shooting club on how it is going to run its target practice because the attorney-general has set down his conditions in that connection—whereas if target practice is not under the auspices of a shooting club then you ought to have specific conditions attached to the permit. These are two different situations.

Mr. Hogarth: And this would be endorsed on the permit.

Mr. Turner (Ottawa-Carleton): The conditions in subparagraph (d) would be endorsed on the permit.

Mr. Hogarth: Right.

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Mr. Turner (Ottawa-Carleton): The conditions in subparagraph (c) would not be endorsed except by the provincial attorney-general. It will be a general authorization to conduct a shooting club at Connaught Ranges, for example.

Mr. Hogarth: My simple point is this: Under subparagraph (d) surely the condition could be that you use the pistol to shoot with the Vancouver Rod and Gun, for example.

Mr. Turner (Ottawa-Carleton): No, you missed the point. This is for any target practice.

[Interprétation]

«ses». On pourra ainsi protéger la vie de sa famille, et ainsi de suite. Nous allons le rédiger en anglais et en français, puis nous vous le remettrons. Il faudra sans doute laisser «ses biens», pour montrer que la personne est propriétaire de ces biens. «Des biens» ne ferait pas l'affaire ici.

L'article 6 du Bill relatif à l'article 97 (2) (a) du Code est réservé.

M. Turner (Ottawa-Carleton): Nous allons rédiger un amendement et le présenter demain.

L'article 6 du Bill relatif à l'article 97(2)(a) du Code est adopté.

Article 6 du Bill relatif à l'article 97(2)(c) et (d) du Code.

M. Hogarth: Quelle est la différence, monsieur le ministre, entre les alinéas (c) et (d)? Pourquoi ne les a-t-on pas réunis en un seul alinéa?

M. Turner (Ottawa-Carleton): Nous avons deux catégories bien distinctes ici. A l'alinéa (c), il s'agit d'un club de tir approuvé par le procureur général de la province. Dans ce cas, il y a plus de flexibilité, plus de latitude pour le club de tir, parce que c'est le procureur général qui établit les conditions. Dans ce cas, si le tir à la cible n'est pas sous les auspices d'un club de tir, on doit alors ajouter des conditions bien précises au permis. Il y a deux situations différentes.

M. Hogarth: Ces conditions figureraient au verso du permis.

M. Turner (Ottawa-Carleton): Les conditions établies à l'alinéa (d) figureraient au verso du permis.

M. Hogarth: Bien.

M. Turner (Ottawa-Carleton): Les conditions établies à l'alinéa (c) ne seraient pas inscrites au verso du permis, sauf par le procureur général de la Province. On donnera l'autorisation d'exploiter un club de tir à Connaught Ranges, par exemple.

M. Hogarth: Il me semble que, selon l'alinéa (d), une condition pourrait permettre de se servir d'un pistolet au Vancouver Rod and Gun, par exemple.

M. Turner (Ottawa-Carleton): Non, là n'est pas la question. Il s'agit du tir à la cible.

[Text]

Mr. Hogarth: Yes, then the condition could be for shooting with the Vancouver Target Club or any other club.

Mr. Turner (Ottawa-Carleton): Or it could be across the Fraser flats. Subparagraph (d) is for people who do not belong to clubs at all.

Mr. Hogarth: I appreciate that, but just endorse that on the permit. Just put in subparagraph (d)

(d) for use in target practice in accordance with the conditions attached to the permit.

Now what conditions might be attached—that you use it with the Vancouver Gun Club?

Mr. Turner (Ottawa-Carleton): No, you can use it anywhere.

Mr. Hogarth: All right, then that condition can be put down—"for target practice".

Mr. Turner (Ottawa-Carleton): That is right, the conditions are attached to the permit. It is up to the permit issuer to attach those conditions.

Mr. Hogarth: My point is, why is there a necessity for subparagraph (c) at all?

Mr. Scollin: This expressly follows the present provisions of Section 94(4)(c) of the Criminal Code which again has worked pretty satisfactorily and is well understood across the provinces. That was re-inserted at the request of the shooting organizations who function well under it. Subparagraph (d) was put in as a very special provision to take care of the more unusual type of situation. Although it is true that as a drafting matter it could perhaps all be put together, this at least makes it clear that the law is not being altered in respect of shooting clubs as they are presently set up and have been operating for years and years.

Mr. Hogarth: Maybe we will clean that up when we get a new Criminal Code.

Clause 6—proposed Section 97(2)(c) and (d) agreed to.

Clause 6—proposed Section 97(3) and (4) agreed to.

On Clause 6, proposed Section 97 (5) and (6)—Permit to persons under 14 years of age.

Mr. Hogarth: I am very much concerned about the provisions dealing with minors. As I understand it, the Code does not create any offence for a minor to be in possession of a firearm without a permit.

[Interpretation]

M. Hogarth: Ça pourrait être un club de tir à Vancouver, ou tout autre club.

M. Turner (Ottawa-Carleton): L'alinéa (d) est rédigé pour les gens qui n'appartiennent pas à des clubs.

M. Hogarth: Je sais, mais il faudrait le dire sur le permis. Et ajouter à l'alinéa (d):

pour s'en servir dans le tir à la cible conformément aux conditions dont le permis est assorti.

Alors, quelles conditions peut-on appliquer au Vancouver Gun Club?

M. Turner (Ottawa-Carleton): Le tir peut se faire partout.

M. Hogarth: Oui, alors on peut établir cette condition pour le «tir à la cible».

M. Turner (Ottawa-Carleton): En effet, les conditions figurent sur le permis. C'est à celui qui délivre le permis de les y inscrire.

M. Hogarth: Mais pourquoi est-il nécessaire alors d'établir l'alinéa (c)?

M. Scollin: Cela suit expressément les dispositions actuelles de l'article 94 (4) (c) du Code criminel qui, encore une fois, se révèle assez satisfaisant dans les provinces. Cette disposition a été réinsérée à la demande des clubs de tir parce qu'elle leur convient bien. L'alinéa (d) a trait à des dispositions spéciales et à des circonstances particulières. On pourrait tout grouper, mais il est clair alors que la loi n'est pas changée pour ce qui est des clubs de tir actuels qui fonctionnent depuis des années.

M. Hogarth: Nous tirerons peut-être cela au clair lorsque nous aurons un nouveau Code criminel.

L'article 6 du Bill relatif à l'article 97(3) et (d) du Code est adopté.

L'article 6 du Bill relatif à l'article 97(3) et (4) du Code est adopté.

Article 6 du Bill relatif à l'article 97(5) et (6)—Permis pour une personne de moins de quatorze ans.

M. Hogarth: Ce qui me préoccupe, ce sont les dispositions concernant les mineurs. Le Code, si je comprends bien, ne crée pas de délit pour un mineur en possession d'une arme à feu, sans permis.

[Texte]

Mr. Turner (Ottawa-Carleton): No offence—just that the weapon can be taken away from him.

Mr. Hogarth: Do you think that is within the purview of the criminal law? You have not made it an unlawful act for a minor to have a firearm in his possession.

Mr. Turner (Ottawa-Carleton): What makes something criminal, Mr. Hogarth, in our view, is something that attaches penal conditions to an act. We have done what we believe is the most appropriate thing in the case of a minor—we are taking the weapon away from him.

Mr. Gilbert: In all probability he could be charged under the Juvenile Delinquents Act.

Mr. Hogarth: What for? Where could the charge be laid under the Juvenile Delinquents Act? It has to be an offence under the Juvenile Delinquents Act.

Mr. Turner (Ottawa-Carleton): A short answer to your question is that we believe this is within the purview of the criminal law.

Clause 6—proposed Section 97 (5) and (6) agreed to.

On Clause 6, proposed Section 97 (7)—other permits

Mr. McCleave: Mr. Chairman, my point is that we have not yet dealt with the suggested amendment to proposed Section 87; therefore perhaps this one could stand until that is dealt with.

Mr. Turner (Ottawa-Carleton): All right, we will deal with it together.

Mr. McCleave: It rises or falls on the fate of the other.

Clause 6—proposed Section 97(7) stood.

Mr. Chappell: Could we revert to paragraph (5)?

The Chairman: We have actually passed paragraph (5).

Mr. Chappell: I appreciate that.

Mr. Hogarth: There is one other point that I want to draw to your attention; that is the hunt.

Mr. Turner (Ottawa-Carleton): I beg your pardon.

[Interprétation]

M. Turner (Ottawa-Carleton): Pas de délit; on ne peut que lui enlever son arme à feu.

M. Hogarth: Croyez-vous que cela tombe sous le coup du droit criminel? Vous n'avez pas établi que c'est un délit pour un mineur d'avoir une arme à feu en sa possession.

M. Turner (Ottawa-Carleton): Ce qui rend un acte criminel, monsieur Hogarth, c'est ce qui attache des conditions pénales à un acte. Nous croyons que pour un mineur, la chose la plus appropriée, c'est de lui enlever l'arme.

M. Gilbert: On pourrait probablement le poursuivre en vertu de la Loi sur les jeunes délinquants.

M. Hogarth: Pourquoi? Quel chef d'accusation peut-on invoquer en vertu de la Loi sur les jeunes délinquants? Il doit s'agir d'un délit qui tombe sous le coup de la Loi sur les jeunes délinquants.

M. Turner (Ottawa-Carleton): Pour répondre brièvement à votre question, nous croyons que cela relève du droit criminel.

L'article 6 du Bill relatif à l'article 97(5) et (6) du Code est adopté.

Article 6 du Bill relatif à l'article 97(7) du Code—Autres permis.

M. McCleave: Monsieur le président, nous n'avons pas encore étudié l'amendement proposé pour l'article 87; on pourrait peut-être le réserver jusqu'à ce qu'on l'étudie.

M. Turner (Ottawa-Carleton): Bien, nous les étudierons ensemble.

M. McCleave: Tout dépend du sort qu'on réserve à l'autre.

L'article 6 du Bill relatif à l'article 97(7) du Code est réservé.

M. Chappell: Peut-on revenir à l'alinéa (5)?

Le président: Nous avons passé cet alinéa.

M. Chappell: Je comprends.

M. Hogarth: Je désire porter un autre point à votre attention: la chasse.

M. Turner (Ottawa-Carleton): Pardon?

[Text]

Mr. Hogarth: I submit that section should be amended so that a child can hunt, and it should not be necessary that he be hunting game for food.

Mr. Turner (Ottawa-Carleton): I have to disagree with you on that. The child can already hunt under supervision. That is permitted within the Code, under supervision. If he wants to go shooting with his dad, there is no problem—no problem anywhere in the Code. But it was pointed out to us that in some parts of the country young boys, or young girls even, ought to be able to go out, as they have for years, alone, unsupervised by their parents, in certain designated areas, particularly in Northern Canada, and particularly children of Eskimo and Indian families who have to survive on what the family can hunt successfully. So that the exception was limited to hunting for the purposes of family provision, game for food. That is a deliberate policy decision.

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Mr. Hogarth: Except, Mr. Minister, the point was made to me and I think to others, by Mr. St. Pierre, the member for Coast Chilcotin, that in the Yukon the children shoot squirrels, skin them and sell the skins. And that is not hunting game for food. This is the very point that he made—that these children, the Eskimo and Indian children, who go out and hunt to get skins should be permitted to do so. The way it is, it is too restrictive—they will not get a permit now. I think that paragraph should be amended to enable that person to hunt game, period.

Mr. Turner (Ottawa-Carleton): We could say, "to hunt game for food or family support." That would take care of it.

Mr. McCleave: There still has to be the issuance of a permit, so perhaps just cutting out "for food" would look after it. It still is a discretionary thing. The kid goes in and says: "I have to shoot squirrels to make. . .

Mr. Turner (Ottawa-Carleton): No, I think we have to limit this to some family purpose. We will sand the point and look into it to see how prevalent those squirrels are.

Mr. Hogarth: Would you speak to Mr. St. Pierre, because if this is not attended to I think he will be most concerned.

Mr. Turner (Ottawa-Carleton): If it comes from Mr. St. Pierre it is not a nutty suggestion.

[Interpretation]

M. Hogarth: A mon avis, cet article devrait être amendé pour qu'un enfant puisse chasser, et non seulement pour de la nourriture.

M. Turner (Ottawa-Carleton): Je ne suis pas d'accord avec vous. Un enfant peut chasser maintenant, sous la surveillance de quelqu'un. Cela est permis par le Code criminel. Si l'enfant veut aller à la chasse avec son père, il n'y a pas de problème. Mais on a signalé que, dans certaines parties du pays, des enfants, et même des filles, devraient avoir le droit de chasser sans surveillance dans certaines régions désignées, par exemple dans le Nord du Canada. Particulièrement les enfants des Esquimaux et des Indiens qui doivent survivre et faire vivre leur famille avec le produit de leur chasse. C'est justement l'exception qu'on accepte: la chasse pour la subsistance de la famille.

M. Hogarth: Mais on a fait ressortir, et d'autres aussi, comme M. St-Pierre, député de Coast Chilcotin, qu'au Yukon, les enfants chassent les écureuils et vendent la peau de ces animaux. Ce n'est pas la chasse pour la nourriture. C'est justement le point qu'on a fait ressortir, à savoir que ces enfants Indiens et Esquimaux qui chassent pour avoir des peaux devraient avoir le droit de le faire. S'il y a une restriction sur l'emploi des armes à feu, ils ne pourront plus le faire maintenant. Je crois que cet article devrait être amendé pour permettre à ces gens de chasser le gibier, un point c'est tout.

M. Turner (Ottawa-Carleton): Nous pourrions dire: «chasser pour manger ou pour assurer la subsistance de la famille». Et tout serait dit.

M. McCleave: Mais on devra encore délivrer des permis alors, il suffirait peut-être de supprimer «pour manger». Mais c'est toujours une mesure discrétionnaire.

M. Turner (Ottawa-Carleton): Non, je crois que nous devons limiter ceci à des fins familiales. Nous allons réserver cette question et l'examiner pour voir combien répandus sont ces écureuils.

M. Hogarth: Pourriez-vous parler à M. St-Pierre, parce que je sais qu'il se fera beaucoup de souci si on ne règle pas la question.

M. Turner (Ottawa-Carleton): Si ça vient de M. St-Pierre c'est naturellement un peu piqué.

[Texte]

The Chairman: Does the Committee wish to reopen Clause 5? We have heard the discussion and now it is stood.

Some hon. Members: Agreed.

The Chairman: On page 14, concerning the proposed Section 97(8), it seems to me that by allowing the use of a weapon outside of the province only when it is authorized by paragraph (c) of subsection (2) is not broad enough because this would exclude those instances which are legitimate under paragraph (d); that is, shooting in private matches, and I would suggest that it should be paragraph (c) or (d) of subsection (2).

Mr. Turner (Ottawa-Carleton): The reason it is limited to (c) is because that is an authorized shooting club which may have shooting meets across the country. You know, they all come down here to Connaught Ranges, or go over to Bisley or some place like that, but (d) is just an individual permit. It is not a shooting club and if he goes across a provincial border, he should have to go to the Commissioner because the Attorney General really should only have authorization in his own province. But the shooting clubs have national meets, and that is why we allowed them to cross provincial borders.

Mr. MacGuigan: Well, this is going to impose a pretty heavy burden on the Commissioner, I suspect, but...

Mr. Turner (Ottawa-Carleton): No, no; he is not worried about it.

Mr. McCleave: The former Commissioner is a very avid rifle person and he did not think there was any objection to it.

Clause 6, proposed Section 97 (8) agreed to.

On Clause 6, proposed Section 97 (9)—*Form and conditions of permit*.

Mr. Deakon: Yes, on proposed Section 97 (9) it would appear that presumably the local registrar of firearms is the one who issues the permits. He would be entitled to add these restrictive conditions to the permit. Although the issuer is authorized to attach only reasonable conditions, there is no indication of the definition of "reasonable", nor does it spell out to whom these conditions are reasonable.

Mr. Turner (Ottawa-Carleton): You know, Mr. Deakon, this was one of the main points

[Interprétation]

Le président: Le comité veut-il reprendre le paragraphe (5)? Nous avons entendu les débats et il est maintenant réservé.

Des voix: Accepté.

Le président: A la page 14, au sujet du paragraphe (8) de l'article 97 qui est proposé, il me semble qu'en permettant l'emploi d'une arme à feu en dehors de la province seulement quand c'est autorisé par l'alinéa 2) du paragraphe (c), ce n'est pas assez large parce que cela exclurait les circonstances qui sont légitimes en vertu du paragraphe (d), c'est-à-dire, le tir dans des compétitions privées, et je crois que ce devrait être l'alinéa 2 du paragraphe (c) ou (d).

M. Turner (Ottawa-Carleton): La raison pour laquelle c'est limité à (c) parce que c'est un club de tir qui est susceptible d'avoir des compétitions de tir n'importe où au pays. Vous savez qu'ils viennent tous ici au champ de tir de Connaught ou qu'ils se rendent à Bisley ou à un autre endroit du genre, mais (d) est seulement pour une permis individuel. Ce n'est pas un club de tir s'il traverse seulement une frontière provinciale: il devrait avoir à se présenter chez le commissaire parce que le Procureur général ne devrait en fait avoir autorité que dans sa province. Mais les clubs de tir ont des rencontres nationales et c'est pourquoi nous leur avons permis de traverser les frontières provinciales.

M. MacGuigan: Cela fera beaucoup de travail pour le commissaire, je crois, mais...

M. Turner (Ottawa-Carleton): Non, non, ça ne l'inquiète pas.

M. McCleave: L'ancien commissaire est un fervent sportif du tir et je n'ai pas pensé qu'il aurait d'objection...

L'article 6 du Bill relatif à l'article 97 (8) du Code est adopté.

Article 6 du Bill relatif à l'article 97 (9) du Code—*Forme et conditions d'un permis*.

M. Deakon: Oui, au paragraphe (9) de l'article 97 proposé, il semblerait qu'il y aurait lieu de croire que c'est le préposé local à l'enregistrement des armes à feu qui délivre les permis. Il aurait droit d'ajouter ces conditions restrictives sur le permis. Bien que le préposé à la délivrance des permis ne peut adjoindre que des conditions raisonnables, il n'y a pas de définition du mot «raisonnable» et il n'est pas explicité pour qui ces conditions sont «raisonnables».

M. Turner (Ottawa-Carleton): Savez-vous, monsieur Deakon, voilà justement un des

[Text]

that the shooting clubs, particularly Commissioner Nicholson and Mr. Passmore, brought up to me when I inherited Bill C-195. You see, under the old Bill C-195—and I am trying to find it—the registrar could have attached any conditions he wanted. I want to read it to you here. The old C-195 read:

(7) Every permit shall be in a form prescribed by the Commissioner, but any person who is authorized to issue a permit relating to any weapon or ammunition may attach to the permit special conditions relating to the use, carriage or possession of the weapon or ammunition to which it relates.

(8) Every one who contravenes any conditions attached to a permit is guilty of an offence punishable on summary conviction.

Now, we did two things. First of all, we got rid of the summary conviction bit. We said if the permit is contravened, the permit can be revoked but there is no offence. You just lose your permit. You appeal to the Magistrate in the court of appeal.

The second thing we said is that those special conditions gave too much arbitrary discretion to a local registrar of firearms, so we substituted the words

...such reasonable conditions relating to the use...as he deems desirable in the interests of the safety of other persons.

The shooting federations are satisfied with these words. Also it means that if the permit is revoked the person who has had the permit revoked can challenge the reasonability of the original conditions. So I think we have limited the discretion reasonably in the interests of safety. I think we have overcome the point that you bring up.

Mr. MacGuigan: I still have some concern that...

Mr. Turner (Ottawa-Carleton): Mr. Scollin says they are still not entirely happy, but they are not so unhappy. I think we have gone about as far as we can go. We have got to attach some conditions.

Mr. MacGuigan: Mr. Chairman, I am still slightly concerned about the amount of discretion which is available. I would not be concerned if this were a discretion determined by regulations, that is, on a Canada-wide basis and it was established in advance what powers the local registrars could exer-

[Interprétation]

principaux points que les clubs de tir m'ont signalé lorsque j'ai hérité de ce bill, en particulier par le commissaire Nicholson et M. Passmore. Dans l'ancien bill C-195, j'essaie de le retrouver, le registraire aurait pu adjoindre n'importe quelles conditions à un permis. Je voudrais vous le lire. L'ancien Bill C-195 dit:

Tout permis devra être rédigé dans la forme prescrite par le commissaire, mais toute personne qui est autorisée à délivrer un permis relativement à une arme ou à des munitions peut adjoindre au permis des conditions spéciales se rapportant au port ou à la possession de l'arme ou des munitions pour en fonction de quoi il est délivré. Quiconque transgresse une des conditions adjointes au permis se rend coupable d'un délit qui peut être puni par une condamnation sommaire.

Maintenant, nous avons fait deux choses. D'abord nous avons supprimé la condamnation. Nous avons dit que si on transgressait au permis, il peut être révoqué il n'y a pas de délit. Le permis est perdu et c'est tout. Il est possible d'en appeler devant le magistrat d'une cour d'appel. La deuxième chose que nous avons dite c'est que les conditions spéciales accordaient trop de discrétion arbitraire au registraire local des armes à feu; nous avons donc substitué comme

conditions raisonnables se rapportant à l'usage...par comme il le juge désirable pour la sécurité d'autres personnes.

Les fédérations de Tir sont satisfaites de ce libellé. Cela veut aussi dire que si un permis est révoqué, la personne qui subit cette révocation peut contester que les conditions originales étaient raisonnables. Je crois que nous avons défait les questions que vous allez soulever.

M. MacGuigan: Je suis encore préoccupé par...

M. Turner (Ottawa-Carleton): M. Scollin dit qu'encore une fois ils ne sont pas entièrement contents, mais ils ne sont pas malheureux. Je crois que nous sommes allés à peu près aussi loin que nous pouvons le faire. Il faut adjoindre des conditions.

M. MacGuigan: Monsieur le président, je suis encore légèrement inquiet au sujet de la part de discrétion qui est disponible. Je ne m'inquiéterais pas si cette discrétion était déterminée par des règlements. Ceci s'applique à tout le Canada et il a été établi à l'avance quels sont les pouvoirs que les regis-

[Texte]

cise, but I am concerned that it is left to the individual discretion of each official across the country.

Mr. Turner (Ottawa-Carleton): That was also discussed with us by the shooting federations and I undertook to them that before we issued conditions under the Code as to what general conditions were reasonable—that is to say, set the parameter of general conditions—we would discuss it with them. In other words, we will issue general conditions which will set a guideline for what reasonable conditions should be. Then, of course, the local issuer of the permit will satisfy whatever local conditions are in his locality.

I might say that the power to impose conditions, we believe, is necessary in the interests of public safety, and we believe that rigid statutory provision would not suit all the local variations we might find, for instance, down in Point Pelee, or in that Provincial Park you have near there as well.

Mr. MacGuigan: The Pelee National Park.

Mr. Turner (Ottawa-Carleton): Then there is a Provincial Park which Mr. Whelan considers to be more favourable to the hunting people than our National Park down there. The local registrars are responsible appointees of either the Commissioner of the Royal Canadian Mounted Police or the Attorney General. They are subject to some review as well on how they are discharging the duties.

Clause 6, proposed Section 97(9) agreed to.

Clause 6, proposed Section 98(1) agreed to.

On Clause 6, proposed Section 98(2)—*Application for registration certificate*.

Mr. Hogarth: Mr. Chairman. I was a little concerned with respect to the observations made by Mr. Scollin this morning that when you get the permit to transport your weapon to the local registrar of firearms for examination, that then and there it remains there. I think that should be clearly spelled out in this statute, because you see the argument that he has not got a certificate is rather spurious because he has not been in a position to get one. Surely his possession is lawful up to that time.

[Interpretation]

traies locaux pourraient exercer, mais je suis inquiet que ce soit laissé à la discrétion de chacune des personnes nommées, dans tout le pays.

M. Turner (Ottawa-Carleton): Justement, on en a discuté avec les fédérations de tir et je me suis engagé à en discuter avec elles avant de formuler des conditions en vertu du Code, lorsqu'il s'agira de déterminer si des conditions sont raisonnables, c'est-à-dire pour établir des normes relatives aux conditions générales. Autrement dit, nous allons y mettre des conditions générales qui serviront de directives pour déterminer ce que devraient être des conditions raisonnables. Ensuite, naturellement, la personne qui émettra les permis pourra satisfaire aux conditions régnautes dans sa localité.

Je dirais que nous croyons que le pouvoir d'imposer des conditions est nécessaire pour assurer la sécurité publique et nous croyons que des dispositions réglementaires et rigides ne seraient pas assez souples devant les différences locales que nous pouvons rencontrer par exemple à la Pointe Pelée ou aussi bien dans le parc provincial qui se trouve près de là.

M. MacGuigan: Le parc national de Pelée.

M. Turner (Ottawa-Carleton): Ensuite, il y a un parc provincial que M. Whelan considère être plus propice aux chasseurs que notre parc national dans cette région. Les registraires locaux sont des personnes responsables qui sont nommées soit par le commissaire de la Gendarmerie canadienne, soit par le procureur général. Ils peuvent être soumis à une inspection sur la façon dont ils s'acquittent de leurs fonctions.

L'article 6 du Bill relatif à l'article 97 (9) du Code est adopté.

L'article 6 du Bill relatif à l'article 98 (1) du Code est adopté.

Article 6 du Bill relatif à l'article 98 (2) du Code—*Demande de certificat d'enregistrement*.

M. Hogarth: Monsieur le président, j'étais un peu préoccupé quant aux remarques faites par M. Scollin ce matin à l'effet que lorsque vous obtenez un permis pour apporter votre arme au registraire local des armes à feu pour une inspection, après l'examen, l'arme reste là. Je crois que ceci devrait être expliqué clairement dans la loi. Parce que voyez-vous l'argument qu'il ne détient pas de certificat est mal fondé parce qu'il ne pouvait pas s'en procurer un. Il est certain que la possession d'une arme est légale jusqu'à ce moment-là.

[Text]

I think if we are going to leave the weapon there it should be spelled out in the Act that that weapon stays with the local registrar of firearms until such time as the appropriate certificate issues.

Mr. Turner (Ottawa-Carleton): Well, it is in the Form 44 already. The problem that you are worried about is provided for in Form 44 under the present Code. In other words, he cannot take it out there anyway because he could not move unless he had the permit.

Mr. Hogarth: Yes, but the point is he brings it to the registrar of firearms and it is spelled out "for examination". Now, surely we should also say "and the said weapon shall remain with the local registrar until..."

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Mr. Turner (Ottawa-Carleton): But he does not get a permit to take it away until the permit is filled out, so he cannot take it away until he has a permit.

Mr. Hogarth: Does he have to have a permit to take it back?

Mr. Scollin: Until he has that, that permit only authorizes him to convey it to the police station for examination.

Mr. Hogarth: Yes.

Mr. Scollin: There it waits until it is registered, and then the same permit allows him to carry it to his house. In the meantime, if he were to carry it to his house before it had been registered, he would be in possession of an unregistered firearm. He would be committing an offence and the police could not possibly permit that.

Mr. Hogarth: You have missed my point, because there is no possibility of...

Mr. Scollin: I do not think I have missed your point, Mr. Hogarth. I think...

Mr. Hogarth: Well, excuse me, witness; I am just pointing out that there is no way in which he could have a certificate.

Mr. Scollin: Consequently there is no way he could therefore be in lawful possession of a firearm.

Mr. Hogarth: Right; so why is it not spelled out that it remains with the...

[Interpretation]

Je crois que si l'arme doit être laissée là la loi devrait préciser qu'elle doit être laissée au registraire des armes à feu jusqu'à ce qu'un permis conforme puisse être délivré.

M. Turner (Ottawa-Carleton): Bien, c'est la formule 44. Le problème qui vous inquiète a déjà été prévu par la loi en vertu du présent code. En d'autres mots il ne peut pas l'apporter au registraire de toute façon parce qu'il ne pourrait circuler sans avoir le permis.

M. Hogarth: Oui mais la question est qu'il l'apporte au registraire des armes à feu et qu'il est bien précisé que c'est pour un examen. Sûrement, nous devrions dire: «et la dite arme à feu devra rester chez le registraire local jusqu'à ce que...»

M. Turner (Ottawa-Carleton): Mais il n'obtient pas de permis pour l'apporter avec lui avant que la formule n'ait été remplie; il ne peut donc pas l'apporter avant d'avoir le permis.

M. Hogarth: Est-ce qu'il doit avoir un permis pour la rapporter.

M. Scollin: Jusqu'à ce qu'il ait cela, ce permis l'autorise seulement à la porter chez le chef de la police pour examen.

M. Hogarth: Oui.

M. Scollin: L'arme reste là jusqu'à ce qu'elle soit enregistrée, et ensuite le même permis l'autorise à l'apporter à son domicile. Dans l'intervalle, s'il devait l'apporter chez lui avant qu'il soit enregistré, il serait en possession d'une arme non enregistrée. Il commettrait un délit et la police ne pourrait pas le permettre.

M. Hogarth: Vous n'avez pas compris le point que je soulève. Je voudrais vous faire comprendre qu'il n'y a pas de moyen...

M. Scollin: Je ne crois pas ne pas saisir le point que vous soulevez M. Hogarth. Je crois...

M. Hogarth: Bien, mes excuses, M. le témoin, mais je souligne qu'il n'y a aucune façon par laquelle il pourrait obtenir un certificat.

M. Scollin: Il s'ensuit donc qu'en aucune façon il pourrait être légalement en possession d'une arme à feu.

M. Hogarth: C'est exact; pourquoi donc ne précise-t-on pas que l'arme reste...

[Texte]

Mr. Turner (Ottawa-Carleton): He cannot possibly get it out of there.

Clause 6, proposed Section 98 (2) agreed to.

On Clause 6, proposed Section 98(3)—*Matters to be reported to Commissioner.*

Mr. Deakon: Here again the same thing arises. You are giving discretionary powers to a local registrar. If he takes a dislike to an applicant he may make it very embarrassing for him in this regard, but I guess I will have something more to say when we come to 98.

Mr. Turner (Ottawa-Carleton): There is a right of appeal here, you know.

Mr. Deakon: I know that.

Mr. Turner (Ottawa-Carleton): We have to put human beings in there. I cannot put saints all over the place.

The Chairman: Shall Clause 6, proposed Section 98 (3) carry?

Mr. Hogarth: Mr. Chairman, I am sorry to take up so much time, but these matters have been brought to my attention and I feel it is my duty to put them before this Committee.

What concerns me is why it should be restricted to something that he has notice of; why should it be restricted, too, in that it is only when it is desirable in the interest of the safety of other persons that it not issue; and why should he not have the broadest discretion to refuse the registration of a restricted weapon for any reason that he might deem proper, and then that can be appealed?

Mr. Turner (Ottawa-Carleton): You had better get together with Mr. Deakon. You want to give him a more arbitrary power.

Mr. Hogarth: Very much so.

Mr. Turner (Ottawa-Carleton): Yes. We want to limit his power to public safety, and use it, as desirable, in the interest of public safety. That is what this is all about. You will have to consult with Mr. Deakon on this, because I think Mr. Deakon, quite properly, is concerned about the limit of the discretion; you want him to have almost an arbitrary discretion.

Mr. Hogarth: Yes, I do. But I do not think it should be necessary that he have notice of something.

Mr. Turner (Ottawa-Carleton): It is not—like a formal notice. He makes an inquiry, finds out, hears from somebody; you do not have to serve notice on the man.

[Interprétation]

M. Turner (Ottawa-Carleton): C'est impossible qu'elle sorte de là.

L'article 6 du Bill relatif à l'article 98(2) du Code est adopté.

Article 6 du Bill relatif à l'article 98(3) du Code—*Questions qui doivent être signalées au commissaire.*

M. Deakon: Encore la même question se présente. Vous accordez des pouvoirs discrectionnaires à un registraire local. S'il prend en aversion quelqu'un qui demande un permis, il peut lui rendre les choses très difficiles. Mais je crois que je pourrai en dire davantage quand nous en serons à l'article 98.

M. Turner (Ottawa-Carleton): Il y a un droit d'appel, vous savez.

M. Deakon: Je le sais.

M. Turner (Ottawa-Carleton): Ce sont des êtres humains, ce ne sont pas des saints qu'on place dans ces postes.

Le président: Adopte-t-on le paragraphe 6, futur paragraphe 98(3)?

M. Hogarth: Monsieur le président, je m'excuse de prendre tant de temps du comité, mais on m'a signalé ces points et je dois les signaler au comité. Pourquoi cela serait-il restreint à une chose pour laquelle il a été avisé? Pourquoi est-ce que cela est limité? Pourquoi n'est-il pas délivré seulement dans l'intérêt de la sécurité des autres personnes? Pourquoi n'aurait-il pas la plus grande latitude possible pour refuser d'émettre un permis pour une arme restreinte pour d'autres raisons? Ensuite on pourrait faire appel.

M. Turner (Ottawa-Carleton): Vous devriez vous entendre avec M. Deakon parce que vous voulez lui donner plus de pouvoirs arbitraires.

M. Hogarth: Certainement.

M. Turner (Ottawa-Carleton): Nous voudrions simplement limiter son pouvoir aux facteurs de sécurité publique, et c'est cela que l'article vise. Vous feriez mieux de vous entendre avec M. Deakon, parce que M. Deakon s'inquiète à raison de la limite des pouvoirs et vous voulez que les pouvoirs soient arbitraires.

M. Hogarth: Oui, mais je ne pense pas qu'il soit nécessaire qu'on lui donne avis.

M. Turner (Ottawa-Carleton): Il ne s'agit pas d'un avis en bonne et due forme. Il fait une enquête et c'est tout

[Text]

Clause 6—proposed Section 98(3) and (4) agreed to.

Clause 6—proposed Section 98A (1) agreed to.

On Clause 6—proposed Section 98A (2)—*Revocation of permit*

Mr. Deakon: Relative to this clause, Mr. Chairman, revoking an existing registration certificate has very inequitable results, I submit. This section provides no protection whatever regarding property rights. The gun owners apparently opposed this part of the Bill previously, and felt that Section 98G of this new amendment was more equitable and fair under the circumstances because it apparently substituted proper court procedures for these arbitrary decisions made by the Commissioner, the RCMP, and other local registrars.

Mr. Turner (Ottawa-Carleton): You have a fairly broad right of appeal here, Mr. Deakon, in the revocation of a registration certificate. On page 16, starting with (5) and following, you can appeal the revocation of any permit, refusal to issue a business permit, refusal of the Commissioner to register and revocation by the Commissioner of a registration certificate. At present there is no right of appeal whatsoever against the refusal of any permit, or the revocation of any permit. This right of appeal is something new in these amendments. Today you do not have a right of appeal.

Therefore, you follow the notice of appeal in (5) and the appeal in (6) and the service of notice of appeal; how it is disposed of; and an appeal to the Court of Appeal—although Mr. Hogarth is worried about that and will undoubtedly bring it up. These are pretty wide areas.

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Mr. Deakon: I submit that 98G is sufficiently broad to take care of it.

Mr. Turner (Ottawa-Carleton): Of course, 98G is a different situation. That is a seizure provision. Appeal from issuance or revocation of a permit is a different situation from the seizure of weaponry. We drafted two different sections, because they are not quite the same.

Clause 6—proposed Section 98A (2) to (5) inclusive agreed to.

On Clause 6—proposed Section 98A (6)—*Appeal*

Mr. Deakon: I have a point here about the situation of magistrates. In Ontario and Quebec we have provincial judges...

[Interpretation]

L'article 6 du Bill relatif à l'article 98(3) et (4) du Code est adopté.

L'article 6 du Bill relatif à l'article 98A(1) du Code est adopté.

Article 6 du Bill relatif à l'article 98A(2) du Code—*Révocation du permis*

M. Deakon: En ce qui concerne cet article, monsieur le président, la révocation d'un certificat existant donne des résultats très inéquitables. Il n'y a pas de protection pour les droits de propriété. Les propriétaires d'armes à feu se sont déjà opposés à cette partie du bill; ils pensaient que l'article 98G était plus équitable et plus juste dans les circonstances, parce qu'il substitue apparemment les procédures de justice normales aux décisions arbitraires prises par un commissaire, un gendarme ou autre greffier municipal.

M. Turner (Ottawa-Carleton): Vous avez un droit d'appel assez étendu ici, M. Deakon, pour la révocation d'un certificat d'enregistrement. A la page 16, à l'article 5 et suivants, il y a les droits d'appel contre la révocation d'un permis, le refus de délivrer un permis d'affaires, le refus d'enregistrer de la part du commissaire. Il n'y a pas, actuellement, de droit d'appel contre la révocation ou le refus d'émettre un permis. Le droit d'appel est quelque chose de nouveau dans ces amendements. En conséquence, on suit l'avis d'appel de (5), l'appel (6) et le service de l'avis d'appel; et l'appel devant la Cour d'Appel. Bien que M. Hogarth soit soucieux, la latitude est assez grande.

M. Deakon: Je pense que 98G est assez large.

M. Turner (Ottawa-Carleton): Dans 98G, il s'agit d'une autre chose. C'est le droit de saisie. A 98 a), il s'agit de révocation de permis et c'est tout à fait différent. C'est pourquoi nous avons rédigé deux sections.

L'article 6 du Bill relatif à l'article 98A (2) à (5) du Code est adopté.

Article 6 du Bill relatif à l'article 98A (6) du Code—*Appeal*

M. Deakon: Une seule question, en ce qui concerne la situation des magistrats. Dans l'Ontario et le Québec, il y a des juges provinciaux qui sont nommés par le gouvernement fédéral.

[Texte]

Mr. Turner (Ottawa-Carleton): Who are appointed by the federal government. Right? I did not get your point.

Mr. Deakon: Do you not think it should be added that magistrates are actually provincial—

Mr. Turner (Ottawa-Carleton): I am sorry; I missed your point, Mr. Deakon. Yes, "magistrate" includes a provincial judge in the definition section of the Code.

Mr. Deakon: Thank you.

Mr. Turner (Ottawa-Carleton): That is on page 2 of the Bill.

The Chairman: Mr. Chappell?

Mr. Chappell: Mr. Chairman, this may seem to be a small point, but more and more I have observed people have been denied their right of appeal because of a period that was so short. Some person is refused, he finds out later there is an appeal and by the time he gets to the lawyer the 30 days is up. I personally prefer "or in such longer period as the magistrate may allow." The magistrate has a discretion, but so often where there is a time limitation some person has the door locked on him.

Mr. Turner (Ottawa-Carleton): We will buy that. We will draft that up and take a look at it tomorrow.

We are not going to give you the same long periods that you would like on expropriation. Mr. Chappell.

Mr. Murphy: Mr. Chairman, we have approved (5), have we?

The Chairman: Yes, we have.

Mr. Murphy: May I make one comment relative to it?

The Chairman: We will stand (6). Mr. Murphy would like to go back to (5).

Mr. Murphy: Where a permit or certificate is revoked the person by whom it is revoked shall notify the holder and give reasons. There is nothing requiring him to notify the holder in writing or to advise him of his right of appeal, as is usually the case in many of these notices. He could tell him over the counter: "I am sorry; the reason I am not giving it to you is such and such," and if the person who is making the application does not have a copy of this proposed act in his pocket he would not know the limit of appeal, or anything of that nature.

[Interprétation]

M. Turner (Ottawa-Carleton): Exact. Je n'ai pas compris le point que vous avez soulevé.

M. Deakon: Est-ce qu'on ne devrait pas ajouter que les magistrats sont provinciaux.

M. Turner (Ottawa-Carleton): Je suis désolé, je ne vois pas où vous voulez en venir, monsieur Deakon. Oui «magistrat» inclut le juge provincial.

M. Deakon: Merci.

M. Turner (Ottawa-Carleton): C'est à la page 2 du Bill.

Le président: Monsieur Chappell?

M. Chappell: Cela peut vous sembler un point insignifiant, mais, de plus en plus, je constate que les gens ne profitent pas de leur droit d'appel parce que la période permise est si courte. Voici un homme à qui on a refusé un permis et le temps qu'il prend pour aller consulter l'avocat, les trente jours sont expirés. Je trouve que l'on devrait prévoir une période de temps à la discrétion du magistrat. Le magistrat a la discrétion, mais tant qu'il y aura une limite de temps, certains trouveront la porte fermée.

M. Turner (Ottawa-Carleton): Nous allons étudier cette question demain. On vous laisse les mêmes délais que vous demandez pour l'expropriation, monsieur Chappell.

M. Murphy: Monsieur le président, nous avons approuvé le paragraphe 5, n'est-ce pas?

Le président: Oui.

M. Murphy: Puis-je y ajouter une remarque?

Le président: Nous allons réserver le paragraphe (6). M. Murphy voudrait revenir à (5).

M. Murphy: Lorsqu'un permis ou un certificat d'enregistrement est révoqué, la personne par qui il est révoqué doit donner avis au détenteur et donner les raisons. Il n'est pas obligé de l'avertir de son droit d'appel comme cela se fait d'habitude. Si l'auteur de la demande qui se voit refusé un permis n'a pas en poche la loi, il ne connaîtra pas la limite de l'appel et pourra perdre son droit d'appel.

[Text]

Mr. Turner (Ottawa-Carleton): We can buy that, in the sense that he ought to be given it in writing. Perhaps the form itself could have a copy of the section on the reverse side.

Mr. Murphy: Yes; something like an assessment notice.

The Chairman: We are re-opening (5), then. Shall (5) and (6) stand?

Mr. Turner (Ottawa-Carleton): We are standing (6) on Mr. Chappell's point.

Mr. Hogarth: What is the material that the magistrate may require? I am concerned about the nature of this appeal. Is this going to be like a trial, or is it going to be appealed by affidavit? It says:

...such further material as the magistrate may require.

He might require affidavits to be filed.

• 1650

Mr. Turner (Ottawa-Carleton): We have run into this kind of thing before. It is very difficult to spell out rules for appeal before a magistrate. A magistrate is his own court, and I think you have to allow the magistrate to set his own procedure for appeal. If that procedure is inadequate, of course, there is always an appeal from him to the Court of Appeal. He is his own court. I do not know how we can set up rules for a magistrate here.

Clause 6—proposed Section 98A (7) agreed to.

On Clause 6—proposed Section 98A (8)—*Appellant as witness*

Mr. Hogarth: You have set out a dandy rule for the magistrate here. I take it that the appellant can be called by the Crown to establish what the local registrar of firearms has to know in the first instance?

Mr. Turner (Ottawa-Carleton): No. It is for the purpose of appeal.

Mr. Hogarth: I appreciate that; but you want the Crown to call the appellant to rule in his own appeal?

Mr. Turner (Ottawa-Carleton): We are not talking about a criminal offence here. The person has a right to go to a magistrate and say: "Look, the issuer revoked my permit and I do not think he had the facts." Therefore, the magistrate is entitled to get at the facts and he is entitled to ask the man. It is not self-incrimination. He is merely entitled to ask him what the facts are. It is not a trial.

[Interpretation]

M. Turner (Ottawa-Carleton): Oui, nous approuvons cette suggestion. L'auteur de la demande devra être notifié par écrit. La formule pouvant porter au dos l'article sur l'appel.

M. Murphy: Oui, quelque chose comme les avis d'évaluation par exemple.

Le président: L'article 5 est rouvert. Doit-on conserver (5) et (6)?

M. Turner (Ottawa-Carleton): L'article 6 est réservé pour que l'on étudie le point proposé par M. Chappell.

M. Hogarth: Quels sont les éléments dont le magistrat a besoin? Quelle est la nature de cet appel? L'appel se fera-t-il par procès ou par déclaration sous serment? On dit:

tout élément dont le magistrat pourra avoir besoin.

Il pourra avoir besoin de déclarations sous serment.

M. Turner (Ottawa-Carleton): Nous avons déjà eu ces difficultés. Il est difficile d'établir des règlements pour les appels devant un magistrat. Le magistrat tient son propre tribunal. Il faut permettre au magistrat d'établir sa propre procédure d'appel. Si cette procédure n'est pas satisfaisante, il y a toujours la possibilité d'appel devant la Cour d'Appel. Je ne sais pas comment nous pouvons imposer des règlements au magistrat.

L'Article 6 du Bill relatif à l'article 98A(7) du Code est adopté.

Article 6 du Bill relatif à l'article 98A(8) du Code—*Appellant comme témoin*.

M. Hogarth: L'appellant peut être requis par la Couronne de produire les documents que le registraire pourrait demander en première instance?

M. Turner (Ottawa-Carleton): Non, c'est pour l'appel.

M. Hogarth: Vous voulez que la Couronne demande à l'auteur de l'appel de décider de sa propre cause?

M. Turner (Ottawa-Carleton): Il ne s'agit pas d'une offense criminelle. Voici une personne qui a le droit de s'adresser à un magistrat et de dire: «Voici, mon permis a été révoqué et je ne pense pas que le greffier avait tous les faits». Le magistrat a le droit de demander quels sont les faits. Ce n'est pas un procès.

[Texte]

Mr. Hogarth: Should not the local registrar of firearms, or the Commissioner, supply the reason? He is appealing the reasons for his being refused registration. Should not the local registrar of firearms report that?

Mr. Turner (Ottawa-Carleton): He has the reasons under (5), has he not?

Mr. Hogarth: Yes; that is right; and should not the local registrar of firearms call the evidence to support that?

Mr. Turner (Ottawa-Carleton): The magistrate will hear the appeal, but it just says that...

Mr. Hogarth: But the appellant can now be called by the Crown to establish the reasons the certificate was refused in the first instance.

Mr. Turner (Ottawa-Carleton): The Crown is not going to be involved.

Mr. Hogarth: I am referring to...

Mr. Turner (Ottawa-Carleton): A person goes before a magistrate and appeals against the revocation of his permit. The respondent is not the Crown, it is the permit issuer.

Mr. Hogarth: The Commissioner?

Mr. Turner (Ottawa-Carleton): The issuer of the permit.

Mr. Hogarth: Yes. My point is that the issuer of the permit, the Commissioner, can now call the appellant to establish something that he had heretofore decided when he gave his reasons.

Mr. Turner (Ottawa-Carleton): He cannot call the appellant. The magistrate calls the appellant.

Mr. Hogarth: The magistrate calls the appellant?

Mr. Turner (Ottawa-Carleton): Yes.

Mr. Hogarth: You mean the judicial officer determines what witnesses he shall call?

Mr. Turner (Ottawa-Carleton): He is conducting the appeal. He is his own judicial officer. This is not a trial; it is just a hearing.

The Chairman: Shall Clause 6—proposed Section 98A (8) carry?

Mr. Hogarth: I want to formally go on record about paragraph (8).

[Interprétation]

M. Hogarth: Est-ce que le greffier local des armes à feu ou le commissaire ne doit pas donner les raisons? On en appelle de ces raisons pour le refus d'émission de permis? Est-ce que le greffier des permis ne doit pas donner des raisons?

M. Turner (Ottawa-Carleton): Il y a les raisons au paragraphe (5), n'est-ce pas?

M. Hogarth: Oui, c'est exact; et est-ce que le greffier local des armes à feu ne doit pas donner ses raisons?

M. Turner (Ottawa-Carleton): Le magistrat entendra l'appel, mais on dit tout simplement...

M. Hogarth: Mais l'appellant peut maintenant être appelé par la Couronne pour qu'il établisse les raisons pour lesquelles le certificat a été refusé en première instance.

M. Turner (Ottawa-Carleton): La Couronne ne sera pas impliquée.

M. Hogarth: Je parle de...

M. Turner (Ottawa-Carleton): Une personne va devant un magistrat et interjette un appel contre la révocation d'un permis. Le répondant n'est pas la Couronne, mais l'émetteur du permis.

M. Hogarth: Le commissaire?

M. Turner (Ottawa-Carleton): L'émetteur du permis.

M. Hogarth: Oui, mon point c'est que l'émetteur du permis, le commissaire, peut maintenant demander à l'appellant d'établir quelque chose qu'il avait décidé auparavant lorsqu'il a donné ses raisons.

M. Turner (Ottawa-Carleton): Il ne peut pas appeler l'appellant. Le magistrat peut appeler l'appellant.

M. Hogarth: Le magistrat appelle l'appellant?

M. Turner (Ottawa-Carleton): Oui.

M. Hogarth: Vous voulez dire que le juriste détermine quels témoins seront appelés?

M. Turner (Ottawa-Carleton): Il entend un appel. Il est son propre juriste. Ce n'est pas un procès; ce n'est qu'une audience.

Le président: La clause 6 de l'article proposé 98A(8) est-elle adoptée?

M. Hogarth: Je m'oppose à l'alinéa (8).

[Text]

Mr. Ouellet: May I ask just as a point of information what is meant by "compellable"? Could you force him to appear?

Mr. Turner (Ottawa-Carleton): Yes, he can be forced to appear. He is appealing a revocation of his permit. The magistrate can say, "I want you to appear to explain to me why you think you ought to get the permit". So, he is competent and he is compellable. He is competent, which means he can testify, the testimony is admissible, and he is compellable in the sense that he has to answer questions.

Clause 6, proposed Sections 98A (8) and (9) agreed to.

On Clause 6, proposed Section 98A (10)—*Appeal to court of appeal*

Mr. Schumacher: Mr. Chairman, what is the court of appeal that is mentioned here? Is this the county or district court, or is it...

Mr. Turner (Ottawa-Carleton): It is the court of appeal as defined in the Criminal Code, wherever section it is.

Mr. Schumacher: Mr. Chairman, I would like to suggest that the appeal should not be to that court; it should be to the country or district court because when you get into courts of appeal it is pretty formal and I think it would be much more convenient to...

Mr. Turner (Ottawa-Carleton): Did Mr. Hogarth put you up to this?

Mr. Schumacher: No, this is my own pet peeve. I think there are too many appeals that have to go to the court of appeal and there should be more use made of the county and district courts with these types of problems.

Mr. Turner (Ottawa-Carleton): You cannot win and we felt that if we had put this into the county court they would have said, "We want a higher court than this reviewing a matter as important as this." I can hear Mr. Woolliams saying that to me now. As long as there is an appeal from the magistrate, if it is the consensus of the Committee, do you think that the county court, or whatever the...

Mr. Schumacher: It is Rule 720. It is trial *de novo* procedure.

Mr. Turner (Ottawa-Carleton): We will stand that and draft it.

[Interpretation]

M. Ouellet: Puis-je demander, simplement à titre de renseignement, le sens du mot «contraignable». Pouvez-vous le forcer à comparaître?

M. Turner (Ottawa-Carleton): On peut le forcer à comparaître. Il en appelle de la révocation de son permis. Le magistrat peut dire: «vous devez comparaître, et me dire pourquoi vous pensez que vous devez avoir un permis». Il est contraignable, et il est aussi compétent. Il est alors compétent, ce qui veut dire qu'il peut témoigner, que son témoignage est admissible et qu'il est contraignable au sens qu'il peut répondre aux questions.

La clause 6 de l'article proposé 98A(8) et (9) est adoptée.

Sur la clause 6, l'article proposé 98A(10)—*Appel devant une cour d'appel*.

M. Schumacher: Monsieur le président, j'aimerais savoir quelle est la cour d'appel mentionnée ici? Est-ce une cour de district ou une cour de comté ou encore...

M. Turner (Ottawa-Carleton): La cour d'appel est définie dans le Code lui-même.

M. Schumacher: Monsieur le président, je propose que l'appel ne doit pas être entendu devant ce tribunal, mais devant la cour de comté et la cour de district, parce que les cours d'appel sont très sévères... Je pense qu'il y a trop d'appels qui doivent être entendus devant la cour d'appel.

M. Turner (Ottawa-Carleton): Est-ce que M. Hogarth vous a poussé à faire cela?

M. Schumacher: Non, c'est mon propre dada. Je crois qu'il y a trop d'appels qui doivent aller à la cour d'appel et qu'on devrait se servir plus des cours de comté et de district pour ce genre de problèmes.

M. Turner (Ottawa-Carleton): Vous ne pouvez gagner et nous avons pensé que si nous avions donné ces causes aux cours de comté, ils auraient dit: «Nous voulons une cour plus élevée pour reviser une si importante question.» J'entends déjà M. Woolliams qui me dit maintenant. Vu qu'il y a un appel de la décision du magistrat, si c'est l'avis majoritaire du comité, pensez-vous que la cour de comté, ou toute autre...

M. Schumacher: C'est le règlement 720. Il s'agit d'un procès selon la procédure *à nouveau*.

M. Turner (Ottawa-Carleton): Ce paragraphe est réservé. Nous allons refaire la terminologie.

[Texte]

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[Interprétation]

The Chairman: Mr. Chappell.

Mr. Chappell: Mr. Chairman, I would point out, when you are considering this, that if there is a court of appeal decision on a question of law that would be binding on all lower courts in the province, but if it is to a county court judge, the next step up, that could vary from county to county and there could be great confusion, but there is a value to a court of appeal.

The Chairman: Mr. Blair.

Mr. Blair: If you get it before a county court judge is there not other procedure which puts it into the judicial assembly line and it can go to the court of appeal?

Mr. Turner (Ottawa-Carleton): As I understand it, not unless there is something...

Mr. Blair: As this is a separate type of procedure the whole procedure has to be spelled out in this section.

Mr. Schumacher: I still feel that there should be a procedure which will allow it to ultimately reach the court of appeal of the province, but we do not want to have cases where individual citizens are always required to go to the court of appeal. Perhaps it will have to go there on one or two occasions to get principles established.

Mr. Turner (Ottawa-Carleton): We want to give a citizen adequate rights of appeal but we do not want to put him through too many intermediate steps. I will accept the Committee's judgments on this. Mr. Chappell has a good point as well.

Mr. Schumacher: Mr. Chairman, I can see Mr. Chappell's point about getting principles established but surely once they are established by the court of appeal we should then have the normal appeal from the magistrate to the county or district court because it is so much easier for the citizen. There should be a way of doing that.

Mr. Turner (Ottawa-Carleton): Let us reverse the logical process here. Once it gets to a court of appeal in any province the magistrates are bound by it. Perhaps we would all like to think about this particular matter one overnight. We will take the point under advisement.

Clause 6, proposed section 98A (10) stood.

The Chairman: Mr. Woolliams.

Le président: Monsieur Chappell.

M. Chappell: Monsieur le président, permettez-moi de souligner que lorsque vous considérez cela, s'il y a décision de la cour d'appel sur un point de loi, ceci serait un précédent pour toutes les cours inférieures de la province, mais s'il s'agit d'un juge de la cour de comté, la prochaine étape pourrait varier d'un comté à l'autre et il y aurait confusion. La cour d'appel a une certaine valeur.

Le président: Monsieur Blair.

M. Blair: Si l'appel est confié à un juge d'une cour de comté, la procédure n'est-elle pas différente? La cause ne suit-elle pas la procédure pour aller à la cour d'appel?

M. Turner (Ottawa-Carleton): A ma connaissance, pas à moins qu'il y ait...

M. Blair: Étant donné qu'il s'agit d'un genre de procédure différente, l'ensemble de cette procédure doit être élaboré dans le présent article.

M. Schumacher: Je crois encore qu'on devrait avoir une procédure qui permettrait d'aller jusqu'à la cour d'appel de la province, mais nous ne voulons pas avoir des cas où les particuliers doivent toujours aller devant la cour d'appel. Il se peut qu'on devra y aller une ou deux fois pour établir des principes.

M. Turner (Ottawa-Carleton): Nous voulons donner aux citoyens des droits d'appel suffisants, mais nous ne voulons pas les astreindre à trop d'étapes intermédiaires. Je m'en remets à la décision du Comité. M. Chappell a aussi soulevé un bon point.

M. Schumacher: Monsieur le président, je comprends le point soulevé par M. Chappell, qui veut que l'on établisse des principes, mais une fois établis par la cour d'appel, nous aurions alors une procédure normale d'appel devant le magistrat de la cour de comté ou de district, parce que c'est beaucoup plus facile pour le simple citoyen. Il devrait y avoir un moyen de faire cela.

M. Turner (Ottawa-Carleton): Renversons le processus logique ici. Une fois que la cause est entendue en cour d'appel de la province, les magistrats sont liés par la décision. Ne devrions peut-être songer à cela durant la nuit. Nous allons y penser.

La clause 6, l'article proposé 98A(10) est réservé.

Le président: Monsieur Woolliams.

[Text]

Mr. Woolliams: I was just going to say that when the Crown officers are thinking about it they might consider this suggestion. The same procedure would apply in appeals under this as in summary convictions. There, of course, a question of law would go to the court of appeal but a question of fact would stay at the county court level, and that would simplify your procedure.

The Chairman: Mr. Hogarth.

Mr. Hogarth: I just wanted to say that I think the concept of a summary conviction with a trial *de novo* appeal is wrong. In the first instance it should be a summons to show cause why the firearms should not be registered, supported by affidavit and with an appeal to a superior court judge, and let it go at that.

On Clause 6, proposed Section 98A (11)
Idem

Mr. McCleave: Paragraph (10) provides for the dismissal of an appeal and an appeal from that. This paragraph provides for where an appeal is allowed and there is an appeal from that. Is that not so? They are both on the same point.

Mr. Turner (Ottawa-Carleton): We will look at them together, yes.

Clause 6, proposed section 98A (11) stood.

Clause 6, proposed Section 98A(12)—agreed to.

On Clause 6, proposed Section 98B—*Members of forces, peace officers, etc.*

Mr. McQuaid: It is just a question of drafting, but why do you have (c) in there as well as part of (a)? A "public officer" is defined in the Code to mean an officer who has charge of revenue, customs, excise, trade or navigation. Also, a "public officer" presumably includes a member of the Canadian Forces. It is not a very important point, but I just wonder why you repeat them.

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Mr. Turner (Ottawa-Carleton): We will agree that it is less than satisfactory drafting. It is a duplication that is, found throughout the present Code.

Mr. Woolliams: It is sort of a *status quo*, Mr. Turner.

Mr. Turner (Ottawa-Carleton): No, no. It would be better to take this duplication right out of the Code all the way through.

Clause 6, proposed Section 98B—agreed to.

[Interpretation]

M. Woolliams: J'allais dire, lorsque vous y penserez, voulez-vous prendre en considération cette idée que la même procédure s'appliquerait que dans les condamnations sommaires. Sur la question de droit, il faudrait aller à la cour d'appel et sur la question de fait, on resterait devant la cour du magistrat; et cela simplifierait la procédure.

Le président: Monsieur Hogarth.

M. Hogarth: Je voulais simplement dire que le concept d'une condamnation sommaire, comportant un appel à nouveau est fautif. En première instance, ce devrait être une assignation d'exposer ses raisons pour ne pas enregistrer l'arme à feu, appuyé d'un affidavit et droit d'appel à un juge de la cour supérieure, et cela finirait là.

Sur la clause 6, l'article proposé 98 A (11)—*Idem*.

M. McCleave: L'alinéa (10) prévoit le renvoi d'un appel et un appel de cette décision. Cet alinéa prévoit où un appel sera permis et il y a un appel de cela. N'est-ce pas? Les deux couvrent le même point.

M. Turner (Ottawa-Carleton): Nous les examinerons ensemble.

La clause 6, article proposé 98A (11) est réservé.

La clause 6, article proposé 98A (12) est adopté.

Sur la clause 6, article proposé 98B—*Membres des forces, agents de la paix, etc.*

M. McQuaid: Il s'agit peut-être tout simplement d'une question de terminologie, mais pourquoi y a-t-il un c) et aussi une partie de a)? Un agent de paix est défini dans le Code comme une personne chargée de la douane, de l'immigration et de l'accise. Pourquoi répéter cela? Et ensuite, les fonctionnaires publics comprennent les officiers, les membres des Forces armées. Ce ne serait pas un point très important, mais pourquoi l'a-t-on répété?

M. Turner (Ottawa-Carleton): Nous sommes d'accord avec vous, mais nous avons suivi la terminologie utilisée dans le Code.

M. Woolliams: C'est une sorte de *status quo*, monsieur Turner.

M. Turner (Ottawa-Carleton): Non, non, on devrait plutôt enlever ces répétitions du Code.

La clause 6, l'article proposé 98B—adopté.

[Texte]

On Clause 6, proposed Section 98C—*Exception*

The Chairman: Mr. Deakon.

Mr. Deakon: In proposed Section 98C, paragraph (b) what is meant by the addition:

.. or for that other person so to use the firearm.

Mr. Turner (Ottawa-Carleton): It says:

...nothing in this act makes it unlawful (b) for a person lawfully in possession of a firearm to permit another person to use it under his immediate supervision in the same manner as he may lawfully use it, or for that other person so to use the firearm.

The other person could not use the firearm unless those words were added. He could hand it over but the other fellow could not use it.

Clause 6, proposed Section 98C, agreed to.

Mr. Chappell: I did not have time to get through it carefully, but that did not let those people back in who had been excluded somewhere else. I take it that this is just to cover young folk out with their fathers.

Mr. Turner (Ottawa-Carleton): That is the provision, yes.

Mr. Chappell: I have not had time to study it yet. It would not let some of these other prohibited people back in?

Mr. Turner (Ottawa-Carleton): Subject to Section 95. Take a look at the preamble. Subject to Sections 95, 96 (2), no, you are not going to sneak in through the back door.

Clause 6, proposed Section 98, agreed to.

Mr. Hogarth: What happens to the firearm?

Mr. Turner (Ottawa-Carleton): It is disposed of in some way. The weapons are destroyed. If the owner is not found they are destroyed by the RCMP. We have not had any problem with this.

Clause 6, proposed Section 98D (1), agreed to.

On Clause 6, proposed Section 98D (2)—*Lost weapon*.

Mr. McCleave: Does this come under the old law, Mr. Minister, or is this something added?

Mr. Turner (Ottawa-Carleton): Proposed Section 98D (2)? This is a new one.

[Interpretation]

Sur la clause 6, l'article proposé 98C—*Exception*.

Le président: Monsieur Deakon.

M. Deakon: Que veut-on dire dans l'article proposé 98C, alinéa b) par l'addition:

...ou le fait que cette autre personne s'en serve de cette façon.

M. Turner (Ottawa-Carleton): L'article dit:

...aucune disposition de la présente loi ne rend illégal b) le fait qu'une personne légalement en possession d'une arme à feu, permette à une autre personne de s'en servir sous sa surveillance immédiate de la manière dont elle peut elle-même légalement s'en servir, ou le fait que cette autre personne s'en serve de cette façon.

Quelqu'un d'autre ne pourrait utiliser l'arme à feu à moins que l'on ajoute ces mots. «Il peut la remettre à quelqu'un sans que celui-ci ne puisse l'utiliser».

L'article 98 (c) est adopté.

M. Chappell: Je n'ai pas eu le temps de le parcourir attentivement, mais cela n'a pas permis aux personnes qui avaient été exclues ailleurs de revenir.

M. Turner (Ottawa-Carleton): C'est le règlement en effet.

M. Chappell: Je n'ai pas encore eu le temps de l'étudier. Cela ne permettrait-il pas aux autres personnes exclues d'y revenir?

M. Turner (Ottawa-Carleton): Sous réserve de l'article 95. Voyez l'exposé préliminaire. Sous réserve des articles 95 et 96 (2), non. Vous ne pouvez vous faufiler par la porte arrière.

L'article 6, l'article 98 B proposé est adopté.

M. Hogarth: Qu'advient-il de l'arme?

M. Turner (Ottawa-Carleton): L'arme est détruite. Si le propriétaire est introuvable, les armes sont détruites par la Gendarmerie royale. Nous n'avons jamais eu de problème de ce côté-ci.

L'article 6 du Bill relatif à l'article 98 D (1) du Code est adopté.

Article 6 du Bill relatif à l'article 98 D (2)—*Armes égarées*.

M. McCleave: Monsieur le Ministre, cet article fait-il partie de l'ancienne Loi ou s'agit-il d'une addition?

M. Turner (Ottawa-Carleton): Vous voulez dire l'article 98D (2)? C'est nouveau.

[Text]

Mr. McCleave: This, in effect, imposes a burden upon the person who has to restrict his weapon to know that it actually exists in his possession really, does it not? Because you can lose something but not be aware that you have lost it unless you go looking for it.

I am sorry, I think this is still a valid point and it may lead to a little bit of fun too. I do not know if I could find my way back into that labyrinth, but there is a distinction between something that you lose but are not aware that you have lost until you go looking for it, and something that you lose and know that it is lost.

Mr. Turner (Ottawa-Carleton): Yes, we presume a *mens rea*, a guilty mind, so he would have to know he had lost it.

Mr. McCleave: There would have to be a *mens rea* then?

Mr. Turner (Ottawa-Carleton): Yes. A *mens rea*, for the benefit of our non-legal friends, means a guilty intent.

Mr. Blair: Also the men from Osgoode Hall Law School.

Mr. McCleave: How does one spell *mens rea* into this? There is no suggestion there of a criminal...

Mr. Turner (Ottawa-Carleton): *Mens rea* is spelled into the whole common law unless there is a derogation from it by a declaration of strict liability.

Mr. McCleave: This is what I suggested. This is a declaration of strict liability here.

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Mr. Turner (Ottawa-Carleton): I will give you an off-the-cuff legal opinion that *mens rea* is presumed in this section.

Mr. McCleave: All right.

The Chairman: Mr. Murphy.

Mr. Murphy: How do the officers of the Crown ever expect to get a conviction under that section? How are you going to prove he did not know?

Mr. Scollin: We had hoped the situation would not arise because as soon as a chap knows he has lost the thing he will go down, as he should do, and report it and we will be quite happy to take his word for it.

Clause 6, proposed Section 98D (2) (3) (4), agreed to.

[Interpretation]

M. McCleave: A vrai dire, ceci impose un fardeau à celui qui dispose d'une arme restreinte; il doit s'assurer qu'il a l'arme en sa possession, n'est-ce pas? Car vous pouvez perdre quelque chose et ne vous en rendre compte que lorsque vous en avez besoin. Oui, ça peut être amusant. Je ne sais pas si je me retrouverais dans ce labyrinthe, mais il y a une différence entre quelque chose que vous perdez mais que vous ne vous en rendez pas compte jusqu'au moment où vous en avez besoin, et quelque chose que vous perdez et que vous vous en rendez compte.

M. Turner (Ottawa-Carleton): Oui, je suppose que si l'homme a une intention criminelle, il devrait savoir qu'il l'a perdue.

M. McCleave: Il devrait donc y avoir une intention criminelle?

M. Turner (Ottawa-Carleton): Oui. A titre d'information pour les non-juristes, «MENS REA» veut dire «intention criminelle».

M. Blair: Pour les personnes de l'école de droit Osgoode Hall également.

M. McCleave: Comment peut-on insérer cette idée ici? On ne peut savoir si l'intention est criminelle.

M. Turner (Ottawa-Carleton): Ceci fait partie du droit commun à moins de preuve du contraire sur une déclaration de responsabilité personnelle.

M. McCleave: C'est ce que je pensais. Il s'agit ici d'une déclaration de responsabilité personnelle.

M. Turner (Ottawa-Carleton): Je vous dirai de suite que d'après mon opinion juridique, cet article présume l'intention criminelle.

M. McCleave: Très bien.

Le président: Monsieur Murphy?

M. Murphy: Comment les procureurs de la Couronne peuvent-ils s'attendre à faire condamner quelqu'un en vertu de cet article? Comment prouverez-vous qu'il ne le savait pas?

M. Scollin: Nous avions espéré que le cas ne se présenterait pas, car aussitôt que quelqu'un réalise qu'il a perdu l'arme, il se présenterait, comme il le devrait, et rapporterait la perte de l'arme, et nous serons heureux de prêter foi à sa déclaration.

L'article 6 du Bill relatif à l'article 98 (d) (2), (3) et (4) du Code est adopté.

[Texte]

Clause 6, proposed Section 98E?

Mr. Hogarth: Why should not that section apply to any weapon when you consider the definition of weapons? For an offence that is being committed.

Mr. Turner (Ottawa Carleton): We will put this up for your consideration, Mr. Hogarth. This is an extraordinary power to search without a warrant and so we felt that it should be limited to those weapons that were considered within the purview of the Code, prohibited and restricted weapons to be dangerous enough to permit that extraordinary remedy.

I believe that we have got to be careful on our rights of seizure without warrant and we have limited it here to where the suspicion is related to a prohibited or restricted weapon. If he cannot use this section, if it is another weapon, he can always get a warrant. I mean, he is not limited. This is without warrant.

Mr. Hogarth: What warrant is ever necessary to search a person? I have never heard of a search warrant for a person. I thought search warrants were confined to dwellings, houses and places. When was there a warrant issued to search a person? I might be wrong.

Mr. Turner (Ottawa-Carleton): You may have something there, Mr. Hogarth, but this was found in the old Section 96(1): "a person or vehicle." It does not seem to have caused us any problems. It has been used before.

Mr. Blair: Mr. Chairman, I was only going to make the comment that it appears to me that there is really no change at all in this particular provision because all that has been done, has been to replace the words which read:

provisions of sections 82 to 91
by the broader words now saying:
provisions of this Act relating to prohibited weapons or restricted weapons

So there does not appear to be any change in principle. Perhaps I am wrong.

• 1710

Mr. Scollin: There might be a slight extension in the sense that Section 82, for example, under the present Code would cover offensive weapons which might not fall within the category of either restricted or prohibited weap-

[Interprétation]

Article 6 du Bill relatif à l'article 98(e) du Code.

M. Hogarth: Pourquoi cet article ne devrait-il pas s'appliquer à toutes les armes, si l'on tient compte de la définition des armes? Pour une infraction qui se commet.

M. Turner (Ottawa-Carleton): Monsieur Hogarth, ici c'est un pouvoir extraordinaire que de fouiller sans mandat. Par conséquent, nous avons pensé qu'il devrait être limité aux armes qui sont considérées comme étant suffisamment dangereuses pour être en autorisation restreinte afin que l'on puisse fouiller la personne sans mandat. A mon avis, nous nous devons d'être prudents à l'égard de nos droits de confiscation sans mandat et nous l'avons limitée ici aux situations où nos soupçons portent sur une arme prohibée ou restreinte. S'il ne peut se servir de cet article ou s'il s'agit d'une autre arme, il peut toujours obtenir un mandat. Ce que je veux dire, c'est que son champ d'action n'est pas limité. Il peut agir sans mandat.

M. Hogarth: Quel mandat est nécessaire pour fouiller une personne? Je n'ai jamais entendu parler de mandat pour fouiller une personne. J'avais l'impression que les mandats s'appliquaient à la perquisition d'un logement ou d'un local. Je me trompe peut-être. Je ne savais qu'il fallait un mandat pour fouiller une personne.

M. Turner (Ottawa-Carleton): Vous avez peut-être quelque chose là, monsieur Hogarth. On a trouvé cela mentionné à l'ancien article 96(1): Une personne ou un véhicule, nous n'avons pas eu de problèmes à ce sujet. On s'en est déjà servi.

M. Blair: Monsieur le président, je voulais simplement faire remarquer qu'à mon avis il n'y a vraiment pas eu de changement en ce qui concerne cette question, car tout ce que l'on fait, c'est de remplacer les mots:

dispositions des articles 82 à 91
par des termes plus généraux qui sont:
Dispositions de cette Loi relative aux armes prohibées ou à autorisation restreinte.

Donc il ne semble pas y avoir de modifications dans le principe. Je me trompe peut-être?

M. Scollin: Peut-être que la section 82 pourrait comprendre les armes offensives qui ne figurent pas dans le cadre des armes prohibées ou des armes à autorisation restreinte. Des armes qui sont restreintes mais que l'on

[Text]

ons, weapons that are restricted but not registrable, or that do not require registration. They do not require permits; they are knives, axes, and things of this sort. So that in that sense perhaps there is a slight limitation in this present clause.

Mr. Blair: This present provision might be somewhat less sweeping than the...

Mr. Scollin: Less sweeping than the previous one.

Mr. Chappell: May I just make an observation. I am afraid some of the members feel that when you are changing a section you should redraft it completely. And I thought I should point out for the sake of those who drafted the Act that one has to be very careful not to change it unless it is necessary. You throw out all those cases decided in that section. In other words, you throw out a fair amount of jurisprudence if you change the section, unless it is absolutely essential.

Mr. Turner (Ottawa-Carleton): I did not want to get into an argument with Mr. Woolliams when he threw that *status quo* bit across the floor, but obviously when you are dealing with a penal statute, every word you change relates to every other section in this Code. This is a penal statute upon which case law has been built, and you have to be very careful what you do here. Mr. Woolliams knows that as well as I do and he was only joking at the time.

Mr. Hogarth: Mr. Chairman, I have not had an answer to my question. I cannot see how we should put in there "without warrant, a person" because I know of no search warrant for a person and I just would like to have the question answered. I cannot understand why these things cannot be cleaned up as they go along.

Mr. Turner: You may have an academic point, Mr. Hogarth, but this section has stood the test pretty well so far.

Mr. Hogarth: Do you know of any judicial authority under this section.

Mr. Turner: I want to put this to you, Mr. Hogarth: it is the absence of judicial authority that makes me feel so confident about the words of this particular section.

Mr. Rondeau: Monsieur le président, j'aimerais que le ministre nous donne des explica-

[Interpretation]

n'a pas besoin de faire enregistrer. Il y a toutes sortes de choses, comme des couteaux, des haches, pour lesquelles on n'a pas besoin de permis. Par conséquent, dans cet ordre d'idée, le présent article comporte quand même une certaine restriction.

M. Blair: Cette présente disposition pourrait être un peu moins générale que...

M. Scollin: Cette mesure est un peu moins générale que la précédente.

M. Chappell: J'ai l'impression que lorsqu'on modifie un article, il faudrait le rédiger entièrement et dans l'intérêt de ceux qui ont rédigé la Loi. Je leur conseillerais de ne pas le modifier à moins qu'il ne soit vraiment nécessaire, sinon vous vous débarrasseriez de toutes les situations qui ont servi à cet article. En d'autres termes, vous détruiriez toute une jurisprudence si vous modifiez cet article, à moins qu'il ne soit absolument nécessaire.

M. Turner (Ottawa-Carleton): Je ne voudrais pas aborder une controverse avec M. Woolliams lorsqu'il a soulevé la question du statu quo, mais vous avez affaire avec un statut pénal; chaque mot que vous changez est lié aux autres articles du présent Code. Il s'agit d'un statut pénal sur lequel repose la Loi, et tout changement doit être fait judicieusement.

M. Hogarth: Monsieur le président, on n'a pas répondu à ma question. Je ne vois vraiment pas comment on peut fouiller une personne sans mandat. Je voudrais simplement qu'on réponde à ma question. Je ne comprends pas pourquoi on ne peut pas régler ces questions à mesure qu'elles se présentent.

M. Turner (Ottawa-Carleton): Vous avez peut-être là un point théorique, monsieur Hogarth; mais cet article a très bien subi le test jusqu'ici.

M. Hogarth: Connaissez-vous une décision judiciaire prise en vertu de cet article?

M. Turner (Ottawa-Carleton): Je tiens à vous signaler ceci, monsieur Hogarth; c'est l'absence de décision judiciaire qui me donne tant confiance aux termes de cet article particulier.

Mr. Rondeau: Mr. Chairman, could the Minister give us an explanation of subclause

[Texte]

tions sur le paragraphe (1) de l'article 6, quant à l'alinéa 98E, particulièrement sur les dernières lignes.

«...et il lui est loisible de saisir toute autre chose au moyen ou au sujet de laquelle il croit raisonnablement que l'infraction est ou a été commise.»

Le ministre ne croit-il pas que ces phrases donnent beaucoup trop de latitude aux policiers, car ainsi ils peuvent saisir tout ce qu'ils veulent.

M. Turner (Ottawa-Carleton): Pour des motifs raisonnables. Ils devraient expliquer ces «motifs raisonnables», si la saisie est contestée. Si quelqu'un résiste à la saisie, il peut toujours dire qu'il n'y avait aucun motif raisonnable. On dit: «Motifs raisonnables». Ces mots se retrouvent partout dans le Code criminel.

M. Rondeau: J'ai en mémoire un cas où, à cause d'une arme à feu, on a saisi 7 ou 8 mille dollars de marchandises qui ont été paralysées pendant des mois et dont il n'a pas pu se servir. La police a saisi des biens d'une valeur beaucoup trop grande en comparaison avec la gravité de l'infraction commise: La personne a été condamnée à payer \$10 d'amende. On l'a condamnée à payer \$10 d'amende, on l'a privée de biens d'une valeur de 8 mille dollars et fait perdre un revenu. Alors, c'est en cela que je crois que cet article-là donne trop de latitude aux policiers.

M. Turner (Ottawa-Carleton): Alors, il y a des remèdes assez substantiels aux maux causés à ceux contre qui des saisies illégales ont été commises. La personne que vous mentionnez avait des droits, mais ne s'en est pas servi.

M. Rondeau: Elle s'est servie de ses droits, mais la procédure a pris énormément de temps, et pendant ce temps-là, ses biens étaient totalement paralysés. C'est pour cette raison que, je crois que cet article donne trop de latitude à la police dans de tels cas. Il faut toujours garder le contrôle sur le travail de la police.

M. Turner (Ottawa-Carleton): Il faut toujours balancer les droits des parties: les motifs raisonnables, pour la société, de se protéger, et dans les occasions extrêmes de saisir des biens pour la sécurité de la communauté et, par contre, le droit légitime d'un citoyen de résister à une telle saisie. C'est pour cela que l'agent de la paix devrait avoir des motifs raisonnables de croire: que l'infraction est ou a été commise. S'il ne peut pas justifier son action par de tels motifs, la saisie n'est pas légale.

[Interprétation]

(1) of clause 6, with respect to paragraph 98E, especially the last lines where it says:

“and may seize anything by means of or in relation to which he reasonably believes the offence is being committed or has been committed”.

Does the Minister not think that this sentence gives far too much latitude to policemen, because this enables them to seize anything they want.

Mr. Turner (Ottawa-Carleton): For reasonable motives. They should explain these “reasonable motives” if the seizure is questioned. If somebody resists seizure, that person can always say there was no reasonable motive. The terms used are “reasonable motives”. They appear everywhere in the Criminal Code.

Mr. Rondeau: I know of a case where, because of a fire-arm, \$7,000 or \$8,000 worth of merchandise was seized and held during months and the person concerned was unable to use it. The value of the merchandise seized by the police was far too high compared with the seriousness of the infraction that was committed: the person was fined \$10. That person was fined \$10 and was deprived of merchandise worth \$8,000 resulting in a loss of income. It is along these lines that I think that this clause gives a policeman too much latitude.

Mr. Turner (Ottawa-Carleton): There are fairly substantial remedial measures that can be applied to those individuals who suffer losses due to illegal seizures. The person to whom you refer had rights but failed to use them.

Mr. Rondeau: Yes he did. But it took so much time to have his rights proved that he lost a lot of money in the meantime because his merchandise was held. It is for the reason that I believe this clause gives too much latitude to the police in such cases. The police must always be kept under control.

Mr. Turner (Ottawa-Carleton): Well you have to balance the rights of the parties concerned: the reasonable motive for society to protect itself, and in extreme cases the right to seize goods for the safety of the community, and on the other hand, the legitimate rights of a citizen to resist seizure. That is why a police officer must have reasonable grounds to believe:

that an offence is being committed or has been committed.

If he cannot prove his action by such motives the seizure is not valid.

[Text]

M. Rondeau: Monsieur le ministre, la police avait de bonnes raisons d'effectuer une saisie, et on n'a pas résisté à la saisie. Mais à quelques autres occasions, j'ai vu que la police avait trop de latitude pour saisir. Elle saisissait tout ce qu'elle pouvait trouver. La loi ne détermine pas ici les limites possibles de la saisie, sauf peut-être tout ce qu'un agent de la paix peut imaginer saisissable.

M. Turner (Ottawa-Carleton): Je comprends le problème, mais je crois que le citoyen a ses droits, et qu'il y a toujours ce remède...

Clause 6 proposed Section 98E (1) agreed to.

Clause 6 proposed Section 98E(2) agreed to.

On Clause 6 proposed Section 98F—Seizure.

Mr. Murphy: On Section 98F, I just wanted to observe that earlier we were having some trouble with Thompson sub-machine guns being declared prohibited weapons and the danger or rendering valueless certain antique collections of automatic weapons. Would not Section 98F provide the answer to those who were worried about antique collections? If the weapons are seized the magistrate has the discretion to either order them forfeited or return them to the owner. Do I read that section correctly?

Mr. Scollin: If the articles were wrongly seized, that is, they were legally in possession of the person from whom they were taken, then by virtue of sub-section (2) the magistrate could order the return to the lawful possessor. But if Thompson sub-machine guns were to be rendered prohibited weapons, then he would have no right to hand these back to the fellow from whom they were taken because he immediately would be committing another offence.

Mr. Murphy: I cannot remember now as it is too late in the day, but is there a permit or something for a prohibited weapon?

Mr. Turner: No. It is prohibited.

Mr. Murphy: That is what I thought. Why would the magistrate, then, have any discretion at all with reference to prohibited weapons?

Mr. Scollin: The Department of National Defence, for example, might very well be authorized and one would hope they have plenty of prohibited weapons, and if one of these were seized under 98(1) from a person in whose hands it should not be, then under

[Interpretation]

Mr. Rondeau: I am sorry, Sir, but there was good reason for the seizure and there was no resistance to the seizure. But I know of many cases where too much latitude was given to the police for seizure. The police were seizing everything they could find. The Act does not establish possible limit here concerning seizure, except perhaps everything that a police officer can imagine as being subject to seizure.

Mr. Turner (Ottawa-Carleton): I understand the problem but I think that the citizen has his rights and there is always that remedy...

L'article 6, l'article 98E (1) proposé est adopté.

L'article 6, l'article 98E (2) proposé est adopté.

Article 6, l'article 98F proposé—Saisie.

M. Murphy: En ce qui a trait à l'article 98F, je voudrais faire remarquer que nous avons des difficultés parce que les mitraillettes Thompson seraient déclarées armes prohibées et à cause du danger à rendre sans valeur certaines collections antiques d'armes automatiques. L'article 98F ne répondrait-il pas à ceux qui s'inquiètent des collections d'armes anciennes. Si les armes saisies, le magistrat a le droit de les rendre au propriétaire ou bien de les confisquer. Est-ce que ce n'est pas le cas ici?

M. Scollin: Et si ces articles ont été saisis à tort, c'est-à-dire si elles étaient la propriété légale de la personne à qui on les a enlevées, alors, en vertu du paragraphe (2), le magistrat peut ordonner qu'elles soient rendues à leur propriétaire légal. Mais si les mitraillettes Thompson étaient déclarées armes prohibées, il n'aurait pas alors le droit de les rendre à l'individu auquel on les a enlevées parce qu'il commettrait par le fait même un autre délit.

M. Murphy: Il est trop tard, je ne me souviens pas. Est-ce qu'on peut avoir un permis pour une arme prohibée.

M. Turner (Ottawa-Carleton): Non. C'est prohibé.

M. Murphy: C'est ce que je croyais. Alors, pourquoi le magistrat aurait-il quelque pouvoir discrétionnaire en ce qui a trait aux armes prohibées?

M. Scollin: Le ministère de la Défense nationale, par exemple peut avoir des armes prohibées et il est à espérer qu'il en ait beaucoup, mais si une de ces armes se trouvent entre les mains de quelqu'un qui ne devrait pas l'avoir, alors, en vertu de l'article 98(2),

[Texte]

98 (2), hopefully, the magistrate would make an order returning it to the Minister of National Defence.

Mr. Murphy: I see. Thank you.

The Chairman: Mr. McCleave.

Mr. McCleave: This one, I think, would again depend on the disposition of 87 and the amendment there. So, subject to whether in Section 87 there is a reduction to 14?

The Chairman: Yes.

Clause 6 proposed Section 98F. stood.

Mr. Hogarth: I have one more comment on Section 98F. I just want to draw something to the Minister's attention.

The Chairman: It is on a point other than Mr. McCleave's?

Mr. Hogarth: Yes. I do not understand why when weapons are seized under Section 98E they are dealt with under the provisions of Section 432 where there is a provision for sale, is there not, as I recall it? In conjunction with 431 and 432 there can be sale and the proceeds turned back to the owner. If a rifle is seized from a sixteen-year old boy under this section, it becomes forfeited to the Crown. Why does it not follow the same course? Why is it not dealt with under 431 and 432 also? Why should it be forfeited?

Mr. Scollin: Again, we have seen some advantage in following the procedure which was particularly applicable in the case of minors under the present section 88 sub-section (2) which, in fact, provides for forfeiture to the Crown where it is being seized from a minor. But there has been added to it an additional provision which it is hoped will take care of the legitimate interests of perhaps the true owner of the fire-arm by requiring that a hearing take place before the magistrate. Again Section 88 sub-section (2) has been followed with just a slight improvement in the procedure in the interests of fairness.

Mr. Hogarth: I am sorry, but surely there should not be an absolute forfeiture here. The boy might have paid as much as \$50-\$60 for the rifle. Merely because he did not have a permit does not mean he is committing an offence. Merely because he did not have a permit he loses his rifle. Well, then, surely we should have some provision that it can be detained, etc., or dealt with so that it is sold and he gets the proceeds back.

[Interprétation]

le magistrat peut ordonner de la rendre au ministre de la Défense nationale.

M. Murphy: Je vois. Je vous remercie.

Le président: Monsieur McCleave.

M. McCleave: Monsieur le président, ça dépend de ce qu'on aura fait à l'article 87 et de la modification qui y sera apportée. Donc, sous réserve que dans l'article 87, on réduise l'âge à 14 ans?

Le président: Oui.

A l'article 6, l'article 98F est réservé.

M. Hogarth: J'ai encore un commentaire sur l'article 98F. Je voudrais seulement attirer l'attention du Ministre, sur un autre point.

Le président: Sur un point autre que celui de M. McCleave?

M. Hogarth: Oui. Je ne comprends pas pourquoi lorsque des armes sont saisies en vertu de l'article 98E, elles sont traitées en vertu des dispositions de l'article 432, où il y a des dispositions concernant la vente, si je me souviens bien. D'après les articles 341 et 342, on peut les vendre et en renvoyer le profit au propriétaire. Si vous saisissez un fusil à un jeune de 16 ans, alors il est confisqué au profit de la Couronne? Pourquoi n'agit-on pas de la même manière? Pourquoi n'en dispose-t-on pas selon les articles 432 et 431 également? Pourquoi le confisque-t-on?

M. Scollin: Encore une fois, nous voyons un avantage à suivre la procédure applicable dans le cas de mineurs au titre du paragraphe (2) de l'article 88 qui stipule pour une confiscation au profit de la Couronne, s'il s'agit d'une arme saisie à un mineur. Nous avons, toutefois, ajouter une disposition supplémentaire qui, nous croyons, s'occupera des intérêts légitimes du propriétaire véritable de l'arme en stipulant qu'une audition ait lieu devant un magistrat. Encore une fois, le paragraphe (2) de l'article 98 a été suivi avec une légère amélioration de la procédure dans l'intérêt de la justice.

M. Hogarth: Je suis désolé, mais je ne crois pas que la confiscation devrait être absolue. Le garçon a peut-être payé une soixantaine de dollars pour l'arme. Simplement parce qu'il n'a pas de permis, cela ne veut pas dire qu'il commet un délit. Il perd son fusil parce qu'il n'a pas de permis. Il me semble qu'on pourrait confisquer l'arme, la vendre et lui remettre l'argent ainsi obtenu.

[Text]

Mr. Scollin: I would think that the attorney general being Her Majesty's officer of justice would in fact dispose of it in a way which would be fair to this kid, who spent \$50.00 on the rifle but failed to do what he should have done and got a permit.

Mr. Hogarth: No, but you see once it is forfeited to Her Majesty it becomes Her Majesty's property.

Mr. Scollin: To do with as she pleases.

Mr. Hogarth: Yes, but he has...

Mr. Turner (Ottawa-Carleton): Generally after lecturing the kid he will give him back the gun. He can do anything he wants with it.

Mr. Hogarth: No, he cannot give it back to the boy if he does not have a permit. Suppose the magistrate declares it forfeited. Surely that means it becomes the property of the Crown and if it is sold—You tell me the lost ones are destroyed, I understand surely there should be a provision that it is refunded to the boy.

Mr. Scollin: At the present time under the remission board systems that are in force in the various provinces, forfeited articles are dealt with on a pretty fair basis. For example, in the case of the chap whose rifle has been forfeited for an infraction of the hunting laws, if he comes forward and presents a reasonable case these boards habitually do return the rifles. This is not unusual and it is expected that this will be dealt with fairly by the attorney general once a forfeiture takes place. Of course, the magistrate may make an order returning it to the owner.

Mr. Hogarth: I appreciate that but the boy is the owner.

Mr. Blair: Mr. Chairman, my friend Mr. Hogarth made reference I think to Sections 431 and 432 of the Criminal Code which I understood him to say provided for the payment back of the proceeds to...

Mr. Hogarth: No. I was mistaken, Mr. Blair. There is a section in here, though—and I cannot put my finger on it right now—where there is a sale and a remission of the proceeds. Can you recall what section that is?

Mr. Scollin: In the present Code?

Mr. Hogarth: No, in our proposed one.

Mr. Scollin: There is a provision in the subsequent proposed Section 98G, the seizure section.

[Interpretation]

M. Scollin: Je crois que le procureur général, en tant que représentant de Sa Majesté, pourrait en disposer d'une façon juste pour ce jeune homme qui a dépensé cinquante dollars pour l'arme mais qui a négligé de se procurer un permis.

M. Hogarth: Lorsque l'arme est confisquée, elle devient la propriété de la Couronne.

M. Scollin: Qui peut en faire ce qu'elle veut.

M. Hogarth: Oui, mais le jeune homme...

M. Turner (Ottawa-Carleton): Règle générale, une fois qu'il aura été semoncé, le jeune homme pourra reprendre possession de l'arme. Le magistrat peut faire ce qu'il veut de cette arme.

M. Hogarth: Il ne peut pas la remettre au jeune homme s'il n'a pas de permis. Supposons que le magistrat confisque l'arme. Elle devient la propriété de la Couronne, mais si elle est vendue il me semble que l'argent devrait être remis au jeune homme.

M. Scollin: A l'heure actuelle, les systèmes qui existent dans diverses provinces prévoient des solutions assez justes dans le cas d'objets confisqués. Ainsi, si un individu s'est fait enlever son arme par suite d'une infraction aux lois de la chasse et s'il peut présenter une explication raisonnable, règle générale il pourra en reprendre possession. Cette pratique n'est pas inusitée et nous croyons que de tels cas seront jugés à leur juste valeur par le procureur général s'il y a confiscation. Évidemment, le magistrat peut ordonner qu'elle soit rendue à son propriétaire.

M. Hogarth: C'est le garçon qui est le propriétaire.

M. Blair: Monsieur le président, M. Hogarth a fait allusion, je crois, aux Articles 431 et 432 du Code qui stipulent que les produits de la vente doivent être remis...

M. Hogarth: J'ai fait erreur, monsieur Blair. Il y a un article, que je ne puis trouver présentement, qui traite de la vente et du remboursement des produits de cette vente. Savez-vous de quel article il s'agit?

M. Scollin: Dans le Code actuel?

M. Hogarth: Non, dans ce bill.

M. Scollin: L'article 98G traite de saisie.

[Texte]

Mr. Hogarth: That is right; where you seize it from a person that you believe to be insane you sell it and give the proceeds back to him. Why does a child not get the same treatment?

Mr. Scollin: You are referring to the proposed Section 98G (5) (a)?

Mr. Hogarth: I might say, Mr. Scollin, that I know of no remission board in the Province of British Columbia. I may be wrong but I have never heard of it.

Mr. Scollin: There is something remiss about that, I would think.

Mr. Hogarth: I should say so.

The Chairman: Mr. Hogarth, this proposed section is standing and I am sure the officials will take your observations under advisement.

• 1725

Mr. Hogarth: We had a case in British Columbia where a man who had been suspected of being somewhat mentally deranged had an arsenal in his attic and killed three people from one of the windows of his home. I think that there should be a provision where you can get a summary application to a magistrate on an ex parte basis for a warrant for the seizure of any weapons from people that come within the purview of 98G and thereupon that person can appear and if it is appropriate, application and appeals can take place. But under 98G when this situation arises, and it often arises very quickly, it is only the attorney general who can make this application and it must be made to a superior court judge. By the time that that information is communicated to the attorney general and by the time you have your application pending before the superior court judge the person who is suspected of being mentally ill can do a great deal of damage with the weapons he might have. It is therefore my submission that this should be made much simpler in its effect. It should be an ex parte warrant issued by a magistrate. After all he has the power to issue a warrant for the man's arrest under certain circumstances and it seems to me that we have made this too complex. That is all I have to say about it.

Mr. Turner (Ottawa-Carleton): We reject that, Mr. Hogarth, because first of all I think your reason about delay is illusory. A Crown prosecutor can get before a judge, any judge sitting in chambers, within 15 minutes, 30 minutes, 45 minutes, get his warrant and seize.

[Interprétation]

M. Hogarth: C'est cela. Si l'objet confisqué appartient à une personne qui, à votre avis, n'est pas saine d'esprit, vous pouvez le vendre et remettre le produit de la vente au propriétaire. Pourquoi ne pas accorder le même privilège aux enfants?

M. Scollin: Vous parlez de l'alinéa a) du paragraphe (5) de l'article 98G, n'est-ce pas?

M. Hogarth: Je dois vous dire, monsieur Scollin, que je n'a jamais entendu parler de l'existence d'une Commission du pardon en Colombie-Britannique.

M. Scollin: Je trouve cela plutôt drôle.

M. Hogarth: Moi aussi.

Le président: Nous allons réserver cet article, monsieur Hogarth, et je suis assuré que les intéressés prendront bonne note de vos commentaires.

M. Hogarth: Il est arrivé, en Colombie-Britannique, qu'un individu qu'on croyait mentalement dérangé et qui possédait tout un arsenal dans son grenier a tué trois personnes. Je crois qu'un article devrait permettre aux autorités d'obtenir d'un magistrat qu'il émette un mandat pour permettre la confiscation d'armes qui appartiennent aux personnes dont parle l'article 98G. Par la suite, cette personne peut en appeler de la décision. Actuellement, d'après l'article 98G, lorsque le cas se présente, seul le procureur général peut faire cette demande et il doit s'adresser à un juge de la cour supérieure. Pendant que les renseignements sont transmis au procureur général et que la demande est faite devant le juge de la cour supérieure, cette personne que l'on pense ne pas être saine d'esprit peut causer de grands ravages. Je crois que la procédure devrait être simplifiée. Je crois qu'un magistrat devrait pouvoir émettre un mandat comme il peut émettre un mandat d'amener contre certaines personnes, selon les circonstances. Je crois la procédure trop complexe.

M. Turner (Ottawa-Carleton): Nous ne sommes pas d'accord, monsieur Hogarth, d'abord parce que ce délai dont vous parlez est illusoire. Le procureur de la Couronne peut se présenter devant un juge et en moins de 15, 30 ou 45 minutes obtenir son mandat et effectuer la saisie.

[Text]

An hon. Member: Get him out of bed?

Mr. Turner (Ottawa-Carleton): Certainly, get him out of bed; phone him at night. This is no problem—it depends on how well you know the judge. Secondly, we believe that there ought to be some sort of judicial review over this type of seizure. Although there can be arrests in certain situations under the Code without a warrant, that is usually when a crime is about to be committed, has been committed, hot pursuit, that sort of thing. Really I think you are overstating this particular objection.

Mr. Blair: I think perhaps one point that I would raise as a result of my experience is that there are many localities in Canada that do not have a superior court judge in residence or within easy reach, and this is particularly true, I would suggest, in the Province of Ontario, where all the high court judges are resident in Toronto. It may be surprising to people here to find that there is not a judge of the high court resident in the city of Ottawa.

Mr. Hogarth: It would be interesting to see what happened in Prince George or Grand Forks or Pouce Coupé in our province. They would have to write to the attorney general and the attorney general would write back, give the authority—and what with mail rates the way they are—and then they would have to wait for the assize when the superior court judge came around on circuit...

Mr. Turner (Ottawa-Carleton): Let me just put it this way, Mr. Hogarth. You know that if there was imminent danger or the imminent commission of an offence there are other provisions in the Code that allow and permit automatic fast-moving situations. This is a cache of weapons which, in the interests and safety of that person or persons should not be in their possession. You know—no imminence of an immediate offence, no imminence of a crime, but just the fact that those weapons should not be there.

Mr. Hogarth: No, except the man who says, "I am going to suicide."

Mr. Turner (Ottawa-Carleton): Well...

Mr. Hogarth: Just a minute now. His wife runs to the police...

Mr. Turner (Ottawa-Carleton): Well, if you said that...

Mr. Hogarth: I appreciate that, Mr. Minister, but I just want to make the point clear. When a man's wife walks into a police station

[Interpretation]

Une voix: Et s'il est couché?

M. Turner (Ottawa-Carleton): Sortez-le du lit. Téléphonez-lui en pleine nuit. Ce n'est pas un problème, si vous connaissez bien le juge. De plus nous croyons qu'il devrait y avoir une vérification juridique de ces saisies. Même si le Code permet, en certains cas, d'effectuer des arrestations même si aucun mandat n'a été émis: si un crime est sur le point de se produire, ou s'il vient de se produire, par exemple. Je crois réellement que vous allez un peu loin dans vos objections.

M. Blair: Vous me permettrez de soulever un point que je connais d'expérience. Dans plusieurs municipalités du Canada il n'est pas facile d'atteindre un juge de la Cour supérieure et ceci est particulièrement vrai en Ontario, dont tous les juges de la Cour supérieure habitent Toronto. Vous serez peut-être surpris d'apprendre qu'aucun de ces juges n'habite Ottawa.

M. Hogarth: Il serait intéressant de voir ce qui se produirait à Prince George, Grand Forks ou Pouce Coupé, dans notre province. Les intéressés devraient écrire au procureur général qui leur répondrait par le courrier, malgré les tarifs postaux actuels, pour leur donner la permission d'agir mais il faudrait attendre ensuite la tenue des assises pour voir le juge de la cour supérieure.

M. Turner (Ottawa-Carleton): Vous n'êtes pas sans savoir, monsieur Hogarth, que s'il y a danger imminent ou que si une offense est sur le point de se commettre, le Code permet certaines méthodes automatiques. Il s'agit d'armes qui, pour la sécurité de cette personne ou de ces personnes, ne devraient pas être en leur possession.

M. Hogarth: Sauf dans le cas de celui qui veut se suicider.

M. Turner (Ottawa-Carleton): Et bien...

M. Hogarth: Un instant. Sa femme se rend à la course jusqu'au poste de police...

M. Turner (Ottawa-Carleton): Si vous avez dit...

M. Hogarth: Permettez que je précise. Une femme se rend au poste de police et déclare que son mari veut se suicider et qu'il a déjà

[Texte]

and says, "My husband is going to suicide and he has had difficulty mentally", what in the world can a policeman do about seizing weapons?

Mr. Turner (Ottawa-Carleton): I think you picked the wrong one there. You see, attempted suicide is arrestable without a warrant under the Code.

Mr. Hogarth: He has not attempted it yet.

Mr. Turner (Ottawa-Carleton): Sure, well, there are other provisions in the Code to cover the situation you are worried about.

Mr. McCleave: Would there not be a right to make a chambers application to a county court judge or a local judge?

Mr. Turner (Ottawa-Carleton): I beg your pardon?

Mr. McCleave: For these cases in these outposts such as Ottawa where we do not have a resident supreme court judge, would it not be possible to make the application to a county court judge?

Mr. Turner (Ottawa-Carleton): Wait a minute and we will look at that. Mr. McCleave says, why not a county court?

• 1730

Mr. McCleave: Would they not have those powers already? This is really what I am asking. Maybe I am wrong. I thought that they would have the powers to exercise this application made by the attorney general or to hear the application. It would have to be a supreme court judge and could not be a county court judge?

Mr. Scollin: It is only because in the proposed Section 98G (9) "court" is defined to mean a superior court of criminal jurisdiction. "Superior court of criminal jurisdiction" is itself defined in Section 2, subsection (38) of the Criminal Code...

Mr. Turner (Ottawa-Carleton): Supreme Court of Ontario, Supreme Court of Nova Scotia, etc. I just want to answer this point of Mr. Hogarth's because I do not want anybody to have the wrong impression. This proposed Section 98G, where there are weapons known to be around that the attorney general or his officers or a crown prosecutor feels he ought to get at, he goes to a judge and he gets a warrant to seize them. For the situation that

[Interprétation]

scuffert de trouble mental. Que peut faire le policier pour saisir ces armes?

M. Turner (Ottawa-Carleton): Je crois que vous avez choisi un mauvais exemple. Dans le cas d'une tentative de suicide aucun mandat n'est requis pour effectuer une arrestation.

M. Hogarth: Il n'a pas encore tenté de se suicider.

M. Turner (Ottawa-Carleton): D'accord, mais d'autres articles du Code prévoient ces cas dont vous vous inquiétez.

M. McCleave: Ne serait-il pas possible de s'adresser à un juge d'une cour de comté?

M. Turner (Ottawa-Carleton): Pardon?

M. McCleave: Dans certains coins reculés comme Ottawa, où il n'y a pas de juge de la cour supérieure, ne serait-il pas possible de s'adresser à un juge de la cour de comté?

M. Turner: Nous allons examiner ce cas. M. McCleave parle d'un juge d'une cour de comté.

M. McCleave: N'ont-ils pas déjà ces pouvoirs? C'est ce que je demande. Je croyais qu'ils pouvaient entendre cette demande. Est-il nécessaire que ce soit un juge de la cour supérieure? Ce ne peut pas être un juge d'une cour de comté?

M. Scollin: Selon le paragraphe (9) de l'article 98G, le mot «cour» signifie une cour supérieure de juridiction criminelle. D'autre part, le paragraphe (38) de l'article 2 du Code criminel décrit ce qu'est une «cour supérieure de juridiction criminelle».

M. Turner (Ottawa-Carleton): La Cour supérieure de l'Ontario, la Cour supérieure de la Nouvelle-Écosse. Je désire répondre à ce point soulevé par monsieur Hogarth parce que je ne veux pas que personne soit induit en erreur. Cet article 98G que nous désirons faire approuver traite de ces armes dont le procureur général ou le procureur de la Couronne connaît l'existence et sur lesquelles il désire mettre la main. Il s'adresse à un juge

[Text]

Mr. Hogarth is worried about we have Sections 434 and 435 of the Criminal Code—Arrest Without Warrant.

434. Any one may arrest without warrant a person whom he finds committing an indictable offence.

435. A peace officer may arrest without warrant.

(a) a person who has committed an indictable offence or who, on reasonable and probable grounds, he believes has committed or is about to commit an indictable offence or is about to commit suicide, or

(b) a person whom he finds committing a criminal offence.

You know, there is plenty there in the Code for emergency situations to allow you to move.

Mr. Hogarth: I doubt that very much.

Clause 6 (1), proposed Section 98G agreed to.

On Clause 6 (1), proposed Section 98H—Permit, etc. as evidence.

Mr. Chappell: It may be that the law officers can satisfy me, but as I read the section now I think the wording is pretty strong towards making what is in the document evidence rather than just dispensing with the need to prove the signature.

... a document purporting to be a permit or registration certificate is evidence of the statements contained therein without proof of the signature or the official character of the person appearing...

It does not even say "prima facie evidence". I am not certain because I have not had time to check, but some of those permits have conditions attached, do they not?

Mr. Turner (Ottawa-Carleton): Yes.

Mr. Chappell: Well, it would be quite unusual if all of those were taken to be evidence in that cursory manner.

Mr. Turner (Ottawa-Carleton): That is just evidence of the conditions, that is all; not evidence of the facts. You see, this section follows Section 92(1) and (2) of the present code, with the difference that you have to refer to the different sections as they now are found. Also, concerning substitution of the words "prima facie" evidence, the words "evidence of...without proof" is considered by

[Interpretation]

pour obtenir un mandat qui lui permettra de les saisir. Quant aux autres points soulevés par monsieur Hogarth, il est possible d'agir grâce aux articles 434 et 435 du Code criminel: Arrestation sans mandat.

434. Toute personne peut arrêter sans mandat un individu qu'elle trouve en train de commettre un acte criminel.

435. Un agent de la paix peut arrêter sans mandat

a) une personne qui a commis ou qui, d'après ce qu'il croit pour des motifs raisonnables et probables, a commis, ou est sur le point de commettre, un acte criminel, ou est sur le point de commettre un suicide, ou

b) une personne qu'il trouve en train de commettre une infraction criminelle.

Il y a toutes sortes de dispositions dans le Code pour des cas d'urgence.

M. Hogarth: J'en doute beaucoup.

Article 98G, paragraphe 6, alinéa (1), adopté.

Article 98H, paragraphe 6, alinéa (1).—Permis, etc., en tant que preuve.

M. Chappell: Peut-être que les avocats du ministère pourront me répondre, mais tel que je lis l'article actuellement, il me semble que le libellé est très serré en ce qui concerne la preuve vis-à-vis du document plutôt que la preuve vis-à-vis de la signature uniquement.

... un document donné comme étant un permis ou un certificat d'enregistrement fait preuve des déclarations contenues dans le document sans qu'il soit nécessaire de faire la preuve de la signature de la personne par laquelle il paraît avoir été signé...

On ne parle même pas de preuve «prima facie». Je n'en suis pas absolument certain, car je n'ai pas eu le temps de vérifier, mais certains de ces permis portent certaines conditions. N'est-il pas vrai?

M. Turner (Ottawa-Carleton): Oui.

M. Chappell: Ce serait vraiment inusité de voir tous ces permis pris pour des preuves d'une manière légale.

M. Turner (Ottawa-Carleton): On parle uniquement de la preuve des conditions. C'est tout; non de la preuve des faits. Si vous regardez, cet article fait suite à l'article 92(1) et (2) du présent Code, avec la différence que vous vous référez aux différents articles tels qu'on les trouve actuellement. En ce qui concerne la substitution des mots «prima facie» et leur remplacement par les mots «preuve

[Texte]

the Interpretation Act to mean the same as *prima facie* evidence. We are gradually getting away from and will clean up completely the words "*Prima facie*" evidence from the Criminal Code and substitute the words "*evidence without further proof*". This can be rebutted. This can be rebutted, cross-examined, and so on.

• 1735

Mr. Blair: Perhaps I misread this particular section, but is it not in a sense an ameliorating section in that the accused can bring in his permit and say "I am entitled to have the weapon".

Mr. Scollin: Quite; the idea is that the fellow should not have to call the registrar or anything else. He has a piece of paper there purporting to be signed by a registrar and that is it.

Mr. Blair: I think perhaps this is the public answer; if a person having a weapon had to search around to find the person who signed it, the certificate would be of very little value to him.

Clause 6, proposed Section 98H agreed to.

On Clause 6(2)

Mr. MacGuigan: To save Mr. Hogarth the embarrassment of raising this other point from Mr. McMorran's memorandum...

Mr. Hogarth: Oddly enough, one I do not agree with.

Mr. MacGuigan: The point is that the form numbers are going to be abolished and these form references will not be exact.

Mr. Scollin: The Code will not be cluttered with forms any more and Clause 6 (2) is a transitional provision.

Mr. MacGuigan: Transitional until when?

Mr. Scollin: This may very well be a case where the Minister might wish to consider the question of a period of grace, for example, by delaying the proclamation of these so that people will have an adequate chance to adjust to what they are going to be required to do under the new law.

Clause 6 (2) agreed to.

The Chairman: Is it the wish of the Committee to adjourn now or shall we continue examination of the relationships?

[Interprétation]

de... sans preuve» cette substitution est considérée par la Loi d'interprétation comme voulant exprimer la même idée que la preuve «*prima facie*». Nous nous en éloignons de plus en plus et nous voulons faire disparaître du Code criminel les mots «*preuve prima facie*» et leur substituer les mots «*preuve sans preuve additionnelle*». Ceci peut être refusé, réexaminé, etc.

M. Blair: Peut-être ai-je mal lu cet article en particulier, mais, à mon sens, ce n'est guère une amélioration si un accusé peut apporter son permis et déclarer qu'il a droit au port d'arme pour cette arme particulière.

M. Scollin: C'est à peu près ça. L'idée est que la personne en question n'a pas besoin d'appeler le registraire ou toute autre personne. Il détient un document qui doit être signé par le registraire et c'est tout.

M. Blair: Je pense qu'il s'agit là d'une réponse pour le public. Si une personne détenant une arme doit chercher partout la personne qui a signé le certificat, ledit certificat aurait une piètre valeur pour son propriétaire.

Article 98H, paragraphe 6, adopté.

Paragraphe 6, alinéa (2).

M. MacGuigan: Pour épargner à M. Hogarth l'embarras de soulever le deuxième point du memorandum de M. McMorran...

M. Hogarth: C'est ça, je suis en désaccord.

M. MacGuigan: Le point soulevé est que les numéros de la formule vont être abolis et que les références concernant cette formule ne seront pas exactes.

M. Scollin: Le Code ne veut pas être embarrassé de formules et le paragraphe 6, alinéa (2) est une disposition transitoire.

M. MacGuigan: Transitoire, jusqu'à quand?

M. Scollin: Cela peut être un cas où le ministère désirera étudier la question concernant une période de grâce, par exemple, en retardant la mise en vigueur de ces articles afin que la population puisse avoir la chance de se conformer aux nouvelles dispositions, en vertu de la nouvelle Loi.

L'Article 6(2) est adopté.

Le président: Le comité désire-t-il ajourner ou continuer l'examen des connexités?

[Text]

Mr. Hogarth: Mr. Chairman, may we review the ones that are still standing?

Clerk of the Committee: Under Clause 6, proposed Section 95 was allowed to stand, proposed Section 97 was carried with the exception of proposed Section 97 (2) (a), Section 97 (5), Section 97 (7). Proposed Section 98 was carried. In proposed Section 98A there were a few paragraphs that were allowed to stand and they are Section 98A (5), 98A (6), 98A (10) and 98A (11). Proposed Section 98B was carried in toto and proposed Section 98C was carried; 98D and 98E were carried; 98F was allowed to stand; 98G and 98H were carried.

Mr. Scollin: You left out the proposed Section 87.

Mr. MacGuigan: Mr. Chairman, a number of sections were allowed to stand this morning, two in which I think I made a case, and several others as well.

Clerk of the Committee: Proposed Sections 84, 85 and 87 were allowed to stand. Two definition sections, proposed Section 82(1)(e) and (g) on page 6 were also allowed to stand, sir, from this morning.

Mr. Chappell: Mr. Chairman, what is on tonight, please?

The Chairman: Nothing.

Mr. Chappell: Well I understood there was breathalizer.

The Chairman: The scheduled meetings are Tuesday mornings from 9:30 a.m. to 12 noon and 3:30 p.m. to 6:00 p.m. in the afternoon, and the same thing for Thursday. Now, next Tuesday we just have the morning meeting because of some other functions that certain members have to go to. At this morning meeting which will commence at 9:30 a.m., if we can get this one witness we have in mind I think we should do this, Mr. Woolliams.

Mr. Woolliams: Well, I could not get him today.

The Chairman: I see. Well, I think we will have ample work to proceed with anyway. We will know by Monday, I suppose.

• 1740

Mr. Woolliams: I have just one point before we adjourn. I spoke to the Parliamentary Secretary to the Minister at the steering committee and it was suggested and agreed that we might get a better index so that every-

[Interpretation]

M. Hogarth: Monsieur le président, pouvons-nous revoir les articles qui sont encore réservés?

Le secrétaire du comité: A l'article 6, l'article 95 a été réservé, l'article 97 a été adopté, à l'exception de l'article 97(2) a), l'article 97(5), l'article 97(7). L'article 98 a été adopté. Dans l'article 98A, quelques paragraphes ont été réservés; ce sont les articles 98A(5), 98A(6), 98A(10) et 98A(11). L'article 98B a été adopté en entier, l'article 98C a été adopté; les articles 98D et 98E ont été adoptés; l'article 98F a été réservé; les articles 98G et 98H ont été adoptés.

M. Scollin: Vous avez omis l'article 87.

M. MacGuigan: Monsieur le président, il y avait un certain nombre d'articles que l'on a réservés, dont deux pour lesquels j'en ai fait la demande, de même que plusieurs autres.

Le secrétaire du comité: Les articles 84, 85 et 87 ont été réservés. Deux articles sur les définitions, l'article 82(1) (e) et (g), à la page 6 ont été aussi réservés, monsieur, à la séance de ce matin.

M. Chappell: Monsieur le président, qu'y a-t-il au programme ce soir?

Le président: Rien.

M. Chappell: Je croyais qu'on parlerait de l'analyse de l'haleine.

Le président: L'horaire des réunions est le suivant: les mardis dans la matinée, de 9h.00 à midi, et de 3h.30 à 6h.00 de l'après-midi; c'est le même chose pour les jeudis. Mardi prochain, toutefois, seule la réunion de la matinée aura lieu, parce que certains membres sont retenus par d'autres fonctions. A cette réunion de la matinée, qui débutera à 9h.30 si nous pouvons convoqué un témoin, auquel nous pensions, nous devrions le faire. Monsieur Woolliams.

M. Woolliams: Je n'ai pu le rejoindre aujourd'hui.

Le président: Je vois. Je pense que nous aurons assez de travail pour commencer, mais nous le saurons lundi, je pense.

M. Woolliams: J'ai un autre point avant que nous ajournions. J'ai parlé au secrétaire parlementaire du ministre, au comité de direction, et il a été proposé et adopté qu'on pourrait faire cataloguer le bill. Cela serait

[Texte]

thing is categorized. That would be of some help. This has really not been, with the greatest respect; it is probably to the man who prepared it, but it does not seem to be very helpful to us.

Mr. Turner (Ottawa-Carleton): Concerning the man who prepared it, he prepared it on the instructions of the Committee and that is the way the Committee wanted it. If the Committee wants it in any other form we will be glad to do it.

Mr. Woolliams: No, we did not want it that way at all.

Mr. Turner (Ottawa-Carleton): There is a misunderstanding here.

Mr. Woolliams: We wanted it with headings—abortion, homosexuality, firearms—so that all the sections are together. For instance, when we start on the abortion sections there should be a heading, “abortions” and all the sections in the Bill wherever they are found could be dealt with at that time and cleaned up.

Mr. Christie: In other words, there will be a heading and under that all the related section for each subject in the Bill.

Mr. Woolliams: That is right.

The Chairman: Is that all right, Mr. Minister?

Mr. Turner (Ottawa-Carleton): That is great.

Mr. Gilbert: Mr. Chairman, I am sure all members of the Committee would like to have the brief of Mr. McMorran that Mr. MacGuigan and Mr. Hogarth have. They are very magnanimous persons and I am sure they would be glad to distribute it amongst the members.

The Chairman: Is that agreed, Mr. Hogarth?

Mr. Hogarth: Yes, I have some extra copies. I will bring them along.

The Chairman: Fine, thank you.

Mr. Ouellet: May I bring up a point, Mr. Chairman, before we adjourn?

The Chairman: Mr. Ouellet?

M. Ouellet: Y a-t-il des prévisions au sujet de la publication du rapport de nos

[Interprétation]

très utile. En toute déférence, je dois dire que cette liste n'est pas très utile. Elle l'est peut-être pour celui qui l'a préparée mais elle ne semble pas l'être pour nous.

M. Turner (Ottawa-Carleton): Au sujet de celui qui l'a préparée, il l'a faite suivant les instructions et les désirs du Comité. Si le Comité le désire sous une autre forme, nous serons heureux de la faire.

M. Woolliams: Non, nous ne la voulions pas du tout de cette façon.

M. Turner (Ottawa-Carleton): Il y a un malentendu ici.

M. Woolliams: Nous la voulions avec des en-têtes: avortement, homosexualité, armes à feu... afin que tous les articles soient ensemble. Par exemple, lorsque nous commençons à parler sur les articles de l'avortement, il devrait y avoir une rubrique «Avortement» et tous les articles du Bill où qu'ils se trouvent pourraient être débattus et vidés à ce moment-là.

M. Christie: En d'autres termes, vous voulez qu'il y ait une rubrique et que l'on y énumère tous les articles connexes à chaque sujet dans le Bill.

M. Woolliams: C'est cela.

Le président: Est-ce que ça vous va, monsieur le ministre?

M. Turner (Ottawa-Carleton): D'accord.

M. Gilbert: Monsieur le président, je suis certain que tous les membres du comité aimeraient à pouvoir lire le mémoire de M. McMorran que MM. MacGuigan et Hogarth ont. Ce sont des gens très généreux et je suis certain qu'ils consentiraient à en faire distribuer des exemplaires aux membres.

Le président: Êtes-vous d'accord, monsieur Hogarth?

M. Hogarth: Oui, j'en ai un certain nombre d'exemplaires supplémentaires. Je les apporterai.

Le président: Très bien, je vous remercie.

M. Ouellet: Puis-je soulever un point, monsieur le président, avant que nous ajournions?

Le président: Monsieur Ouellet.

Mr. Ouellet: Has anything been done with regard to the publications of the report of our

[Text]

assemblées? Quant pouvons-nous espérer recevoir les procès-verbaux?

The Chairman: The Clerk states we have priority so far as Minutes are concerned.

Mr. Ouellet: What does that mean—a week, three days?

The Chairman: By Monday, the Clerk states, we should have the Minutes of the first meeting; for the second meeting it will be the day after that, I think.

We will adjourn until 9.30 a.m. Tuesday morning.

[Interpretation]

meetings? When can we hope to obtain the minutes of our meetings?

Le président: Le greffier me dit que nous avons la priorité en ce qui concerne la publication.

M. Ouellet: Est-ce que cela veut dire une semaine, trois jours?

Le président: Lundi, d'après ce que me dit le greffier, en ce qui concerne la première séance le jour d'après pour la deuxième séance.

La séance est levée. Nous reprendrons nos travaux mardi matin à 9h. 30.

OFFICIAL BILINGUAL ISSUE

FASCICULE BILINGUE OFFICIEL

HOUSE OF COMMONS

CHAMBRE DES COMMUNES

First Session

Première session de la

Twenty-eighth Parliament, 1968-69

vingt-huitième législature, 1968-1969

STANDING COMMITTEE
ON

COMITÉ PERMANENT
DE LA

JUSTICE AND LEGAL AFFAIRS

JUSTICE ET DES QUESTIONS
JURIDIQUES

Chairman

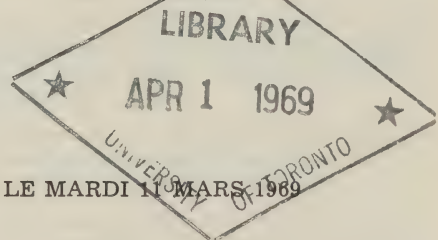
Mr. Donald R. Tolmie

Président

MINUTES OF PROCEEDINGS
AND EVIDENCE

PROCÈS-VERBAUX ET
TÉMOIGNAGES

No. 9



TUESDAY, MARCH 11, 1969

LE MARDI 11 MARS 1969

Respecting

Concernant le

BILL C-150

BILL C-150

Criminal Law Amendment Act, 1968.

Loi de 1968 modifiant le droit pénal.

Appearing

A comparu

Minister of Justice and
Attorney General of Canada.

Hon. John N. Turner

Ministre de la Justice et
Procureur général du Canada.

WITNESS—TÉMOIN

(See Minutes of Proceedings)

(Voir Procès-verbal)

THE QUEEN'S PRINTER, OTTAWA, 1969

L'IMPRIMEUR DE LA REINE, OTTAWA, 1969

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MacEwan,
MacGuigan,
McCleave,

(Quorum 11)

Le secrétaire du Comité
ROBERT V. VIRR
Clerk of the Committee

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JUSTICE ET DES QUESTIONS
JURIDIQUES

Président
Vice-Président

McQuaid,
Murphy,
Rondeau,
Schumacher,
Valade,
Woolliams—20.

¹ Replaced Mr. Marceau on March 10, 1969

¹ Remplace M. Marceau le 10 mars 1969

MINUTES OF PROCEEDINGS

[Text]

Tuesday, March 11, 1969.
(11)

The Standing Committee on Justice and Legal Affairs met this day at 9.40 a.m. the Chairman, Mr. Tolmie, presiding.

Members present: Messrs. Blair, Cantin, Chappell, Deakon, Gervais, Gilbert, Guay (*Lévis*), Hogarth, MacEwan, MacGuigan, McQuaid, Murphy, Ouellet, Schumacher, Tolmie, Valade, Woolliams—(17).

Also present: Messrs. Knowles and Peters.

Appearing: The Honourable John N. Turner, Minister of Justice and Attorney-General.

Witness: From the Department of Justice: Mr. J. A. Scollin, Q.C., Director, Criminal Law Section.

The Committee resumed consideration of Bill C-150.

Mr. Hogarth moved that the following be added to section 82(1)(e) of clause 6 of the said Bill:

(iv) Any firearm that is capable of firing bullets in rapid succession during one pressure of the trigger,

And that section 82(1)(g)(ii) be deleted from the provisions of the said Bill.

Motion negatived.

Under clause 6(1), section 82(1)(e) and 82(1)(g) of the Act were carried.

Under clause 6(1), sections 84 and 85 of the Act were carried *on division*.

Under clause 6(1), under section 87, Mr. Woolliams moved in amendment that line 9 on page 8 be deleted and the following substituted:

the age of sixteen years who is not.

Amendment carried; section as amended carried.

Clause 6(1) relating to section 87 of the Act carried as amended.

Under clause 6(1), section 95 of the Act was carried.

PROCÈS-VERBAL

[Traduction]

Le mardi 11 mars 1969
(11)

Le Comité permanent de la justice et des questions juridiques se réunit ce matin à 9 h. 40, sous la présidence de M. Tolmie, président.

Présents: MM. Blair, Cantin, Chappell, Deakon, Gervais, Gilbert, Guay (*Lévis*), Hogarth, MacEwan, MacGuigan, McQuaid, Murphy, Ouellet, Schumacher, Tolmie, Valade, Woolliams—(17).

De même que: MM. Knowles et Peters.

A comparu: L'honorable John N. Turner, ministre de la Justice et procureur général.

Témoin: Du ministère de la Justice: M. J. A. Scollin, c.r., directeur de la Section du droit criminel.

Le Comité reprend l'examen du Bill C-150.

M. Hogarth propose que l'article 6(1) du Bill soit modifié en insérant ce qui suit, immédiatement après le sous-alinéa (iii) de l'alinéa *e* du paragraphe (1) de l'article 82 de la loi:

(iv) toute arme à feu qui est susceptible de tirer rapidement plusieurs balles pendant la durée d'une pression sur la gâchette.

Et à l'article 6(1) du Bill, que le sous-alinéa (ii) de l'alinéa *g* du paragraphe (1) de l'article 82 de la loi soit supprimé.

La motion est rejetée.

A l'article 6(1) du Bill, les alinéas *e* et *g* du paragraphe (1) de l'article 82 de la loi sont adoptés.

A l'article 6(1) du Bill, les articles 84 et 85 de la loi sont adoptés sur division.

A l'article 6(1) du Bill, M. Woolliams propose que l'article 87 de la loi soit modifié en supprimant la ligne 11 de la page 8 et en y substituant ce qui suit:

une personne de moins de seize.

La modification est adoptée; l'article modifié est adopté.

L'article 6(1) du Bill visant l'article 87 de la loi est adopté tel que modifié.

A l'article 6(1) du Bill, l'article 95 de la loi est adopté.

Under clause 6(1), section 97(2)(a), Mr. Hogarth moved that line 29 on page 12 be deleted and the following substituted:

(a) to protect life or property,

Motion carried and section as amended carried.

Under section 97(5), Mr. Hogarth moved that line 26 on page 13 be deleted and the following substituted:

person to hunt game for food or family support.

Motion carried and section as amended carried.

Under section 97(7), Mr. Woolliams moved that line 38 on page 13 be deleted and the following substituted:

under the age of sixteen years to.

Motion carried and section as amended carried.

Under section 98A(5), Mr. Deakon moved that lines 8 to 10 inclusive on page 16 be deleted and the following substituted:

applicant, as the case may be, in writing of such revocation or refusal and of his reasons therefor and shall include in such notification a copy or extract of the provisions of this section.

Motion carried and section as amended carried.

Under section 98A(6), Mr. Chappell moved that Bill C-150 be amended by striking out line 15 on page 16 and substituting the following:

notified of the action or decision, unless before or after the expiration of that period further time is allowed by a magistrate, appeal

Motion carried and section as amended carried.

Under section 98F, Mr. Woolliams moved that Bill C-150 be amended by striking out line 3 on page 20 and substituting the following:

(a) a person under the age of sixteen

Motion carried and section as amended carried.

Sections 98A(10) and 98A(11) were permitted to stand.

Clauses 9, 10, 11 and 12 were permitted to stand.

A l'article 6(1) du Bill, M. Hogarth propose que l'alinéa a) du paragraphe (2) de l'article 97 de la loi soit modifié en supprimant la ligne 31 de la page 12 et en y substituant ce qui suit:

a) pour protéger des vies ou des biens,

La motion est adoptée, et l'article tel que modifié est adopté.

A l'article 97(5) de la loi, M. Hogarth propose que la ligne 29 de la page 13 soit supprimée et remplacée par ce qui suit:

du gibier pour la nourriture ou pour subvenir aux besoins de sa famille.

La motion est adoptée, et l'article tel que modifié est adopté.

A l'article 97 de la loi, M. Woolliams propose que la ligne 43 de la page 13 soit supprimée et remplacée par ce qui suit:

et de moins de seize ans à posséder

La motion est adoptée, et l'article tel que modifié est adopté.

A l'article 98A (5) de la loi, M. Deakon propose que les lignes 6 à 10 de la page 16 soient supprimées et remplacées par ce qui suit:

est refusée doit donner au détenteur du permis ou du certificat d'enregistrement ou à l'auteur de la demande, selon le cas, avis écrit de cette révocation ou de ce refus et de ses raisons et doit inclure dans cet avis une copie ou un extrait des dispositions du présent article.

La motion est adoptée, et l'article tel que modifié est adopté.

A l'article 98A (6) de la loi, M. Chappell propose que le Bill C-150 soit modifié en insérant après la ligne 15 de la page 16, ce qui suit:

à moins qu'un magistrat ne prolonge ce délai avant ou après son expiration,

La motion est adoptée, et l'article tel que modifié est adopté.

A l'article 98F de la loi, M. Woolliams propose que le Bill C-150 soit modifié en supprimant la ligne 5 de la page 20 et en y substituant ce qui suit:

de moins de seize ans qui n'est

La motion est adoptée, et l'article tel que modifié est adopté.

Les paragraphes (10) et (11) de l'article 98A de la loi sont réservés.

Les articles 9, 10, 11 et 12 du Bill sont réservés.

The Chairman called clause 13.

Le président met en délibération l'article 13 du Bill.

And the debate continuing, the Committee adjourned at 12.01 p.m. to the call of the Chair.

Le débat se poursuit, et à midi 01, le Comité s'ajourne jusqu'à nouvelle convocation du président.

*Le secrétaire du Comité,
R. V. Virr,
Clerk of the Committee.*

[Texte]

[Interprétation]

EVIDENCE

TÉMOIGNAGES

(Recorded by Electronic Apparatus)

(Enregistrement électronique)

Tuesday, March 11, 1969.

Le mardi 11 mars 1969

● 0941

The Chairman: Gentlemen, if it is agreeable, I think we should go back to the clauses which were stood in relation to firearms legislation. The first clause which was stood was 82 (1)(e) on page 6.

Mr. Woolliams: Before you open up, Mr. Chairman, I would like to be recognized. In view of the motion which was put to the Committee and approved, I have had a meeting with our group in reference to witnesses and I think I can safely say—and I do not want to box ourselves in—that we have come up with the idea that we will call two witnesses. I can call one on Thursday and probably call one the following Tuesday. They will be in reference to the sections on homosexuality and abortion. It may be that at that stage we will not have completed some of the other things we are dealing with, and perhaps the Committee—because it is not easy to get professional men during the day—could just go to those sections for the purpose of hearing that evidence and then return to the normal course of doing business as planned by the Committee and by yourself as Chairman.

The Chairman: Is this agreeable to the Committee?

M. Cantin: Monsieur le président, je crois que nous avions convenu que les témoins seraient invités par les membres du comité directeur. Je comprends que M. Woolliams désire procéder de cette manière-là et donner au comité directeur les noms des témoins qu'il désire entendre pour qu'on puisse les inviter.

Mr. Woolliams: Yes. I can do that right now. I will write a letter if you wish but Professor Mewett will be the witness on Thursday and Dr. Robert Lavigne on Tuesday.

The Chairman: Any comments?

On Clause 6, proposed Section 82 (1)(e).

Prohibited weapon

Mr. Hogarth: Mr. Chairman, I propose the following amendment to this clause:

Le président: Si vous y consentez, messieurs, je crois que nous devrions maintenant revenir aux articles que nous avons remis à plus tard au sujet des armes à feu. Le premier article, c'est l'article 82(1)(e) à la page 6.

M. Woolliams: Avant que vous ne commenciez la discussion, monsieur le président, j'ai une réunion avec notre groupe au sujet des témoins que nous devons présenter quant à la motion que le Comité a approuvée, je puis dire en toute sécurité, je crois, que nous aurons deux témoins.

Je puis convoquer l'un de ces témoins jeudi et un autre témoin mardi. Nous parlerons des articles sur l'homosexualité et l'avortement. Il se peut qu'à cette étape, nous n'aurons peut-être pas terminé ces articles-là. Comme il n'est pas très facile d'inviter des professionnels à témoigner, si nous pouvions alors passer à ces articles simplement pour ces témoignages et nous pourrions reprendre après coup notre travail régulier tel que vous le prévoyez.

Le président: Le comité accepte-t-il cette idée?

Mr. Cantin: Mr. Chairman, I thought that there was an agreement according to which the witnesses should be invited by the Steering Committee. I understand that Mr. Woolliams wants to proceed this way and give to the Steering Committee the names of the witnesses he wishes to hear so that we can invite them.

M. Woolliams: Oui, je puis le faire immédiatement. Je peux vous écrire une lettre si vous voulez. Le professeur Newett viendra témoigner jeudi et le docteur Robert Lavigne, mardi prochain.

Le président: Y a-t-il des commentaires la-dessus?

Nous en sommes donc au sous-alinéa (e) de l'alinéa (1) du paragraphe 82 de l'article 6 *arme prohibée*.

M. Hogarth: M. le président, je propose la modification suivante à cet article:

[Text]

That Bill C-150 be amended to provide:

That there be added to the provisions of section 82 (1) (e) of clause 6 of the said bill the following:

(iv) any firearm that is capable of firing bullets in rapid succession during one pressure of the trigger;

And that Section 82(1)(g)(ii) be deleted from the provisions of the said bill.

As I understand the amendment it has the effect of making machine guns prohibited weapons.

● 0945

I do not think it is necessary for me to repeat the remarks I made at the last meeting with respect to this subject. I think the weapons are absolutely lethal and should be removed from all private ownership. I think that those people who might now have them in their possession can easily render then incapable of being used as firearms by blocking the barrel, having them spiked or drilling holes in the barrel. I see no problem concerning confiscation of any kind.

The **Chairman**: Mr. Hogarth, I will allow the Minister to see the proposed amendment.

Mr. Hogarth: I delivered a copy to his office today.

Mr. Woolliams: Mr. Chairman, I was wondering if Mr. Hogarth would fill us in on just what he has in mind. He has been quite brief in the amendment. Some of us may take a sympathetic viewpoint towards this amendment or we might oppose it. I would like him to really outline how he feels it changes the law. I am not quite satisfied from what he has said at the moment that it is going to improve the situation.

Mr. Hogarth: The effect of this amendment will be to remove machine guns from the category of restricted weapons into the realm of prohibited weapons. You cannot get a permit to own a prohibited weapon; it is absolutely against the law to have one anywhere in your possession. However, you can get a permit to own a restricted weapon and keep it in your dwelling house or in your place of business. That is a registration certificate. This amendment has the effect of removing machine guns from the restricted into the prohibited category, so that no member of the public, other than those excepted by the further provisions of the Act—the Department of National Defence, police forces, and so on—can have machine guns in their possession.

The **Chairman**: Would the Minister care to make any comments on this proposal?

[Interpretation]

Que l'on modifie le Bill C-150:

En ajoutant aux dispositions de l'alinéa (e) du paragraphe (1) de l'article 82 de la Loi, à l'article 6 dudit Bill, ce qui suit:

(iv) toute arme à feu qui est susceptible de tirer rapidement plusieurs balles pendant la durée d'une pression sur la gachette.

En supprimant le sous-alinéa (ii) de l'alinéa (g) du paragraphe (1) de l'article de la Loi 82K des dispositions dudit Bill.

Mon amendement interdirait les fusils ou les carabines automatiques.

Je ne pense pas qu'il soit nécessaire de répéter les observations faites à la dernière séance à ce sujet. Je crois que ces armes sont dangereuses et on devrait les interdire à la propriété privée.

Ceux qui en possèdent à l'heure actuelle, pourraient fort bien simplement bloquer le détonateur ou le barillet de la carabine de l'arme à feu en perçant ou en rivant le barillet. Je ne vois aucun problème en ce qui concerne la confiscation.

Le président: J'ai envoyé une copie de cet amendement au bureau du Ministre.

M. Hogarth: J'ai aujourd'hui même déposé un exemplaire de l'amendement sur son bureau.

M. Woolliams: Je me demande si M. Hogarth peut nous dire exactement de quoi il veut parler. Il a été très bref. Nous pourrions voir cet amendement d'un oeil favorable et il pourrait nous expliquer quels changements il propose exactement et comment ils pourraient améliorer la situation actuelle?

M. Hogarth: Eh bien, les effets de cette modification seront de rendre les armes à feu automatiques, armes interdites.

On peut obtenir actuellement un permis pour la détention d'une arme à usage restreint à domicile ou dans une entreprise. Ces petites mitraillettes alors, seraient éliminées de la catégorie «usage restreint» pour tomber dans la catégorie «usage interdit». De sorte que, sauf la police et le ministère de la Défense nationale, personne ne pourrait avoir une mitraillette en sa possession.

Le président: Le Ministre voudrait-il faire des commentaires à ce sujet?

[Texte]

Mr. Chappell: May I ask a question first, please? I do not have a copy of the amendment. Does the amendment as worded only cover machine guns or does it also cover all automatic guns such as pistols?

Mr. Hogarth: As I understand it, it applies to any firearm that is capable of firing bullets in rapid succession during one pressure of the trigger, and that would be all types of machine guns.

Hon. J. Turner (Minister of Justice and Attorney General): If I agree with Mr. Hogarth, the amendment as he proposes it would not only cover machine guns, it would cover every type of automatic weapon. The purport of his amendment is to add this type of weapon to the prohibited list. In other words, it would be an absolute prohibition against possession of this type of weapon except for the armed forces or police forces. Frankly, at the present time we are not inclined to agree, and I will try to explain the reason for this to the Committee.

There are in this country a good many bona fide, legitimate collectors of weapons who keep them at home and they have maintained their collections for many years. At present these collectors can and do register this type of weapon. From the point of view of security, the local registrar and the Commissioner will be entitled, in relation to the registration, to consider whether it is desirable with respect to the safety of others that a person should possess such a weapon.

That is provided in Section 98(3) as well as in Section 98A(4). In other words, both the local registrar and the Commissioner have the power at the moment in individual situations, as they see them, to seize or prohibit weapons if in their opinion the safety of other people is involved. Registration can be revoked by the local registrar under the same conditions as found in Section 98A(2). This is subject to appeal, of course. The difficulty is that we have not been able to find any way of achieving prohibition of this type of weapon and yet having an exception in favour of the bona fide collector. We just have not been able to achieve a type of collector's registration. I might say that we have met with the uniformity commissioners representing all provincial attorneys general. I had a meeting a month and a half ago here in Ottawa with the executive of the Association of Canadian Police Chiefs.

We received no representations from any of the law enforcement authorities, either provincial attorneys general or police chiefs, in support of absolute prohibition in this particular case.

● 0950

We think the amendment is too wide, in any event, as it would make any automatic weapon prohibited, including hand guns. All I can say, from the Minister's point of view, is that I have to leave it to the Committee, but I cannot accept the amendment. I

[Interprétation]

M. Chappell: Est-ce que l'amendement portera seulement sur les mitraillettes ou sur toutes les armes à feu automatiques tels que les pistolets?

M. Hogarth: Toute arme à feu qui peut lancer une succession de balles rapides par une simple pression de la gâchette, cela comprendrait donc tous les genres de mitraillettes ou d'armes à feu automatiques.

L'hon. J. Turner (Ministre de la Justice et Procureur général): Je reconnais que l'amendement de M. Hogarth couvrirait non seulement les mitraillettes mais toutes sortes d'armes à feu automatiques.

Le but de son amendement c'est d'ajouter cette arme à la liste interdite. Autrement dit, tout le monde serait exclus de la possession de cette arme sauf la police et le ministère de la Défense nationale. Nous n'appuyons pas cet amendement à l'heure actuelle, et j'expliquerai cet après-midi pourquoi.

Il y a dans notre pays, bon nombre de collectionneurs d'armes à feu qui les conservent à la maison, qui ont cette collection depuis des années. Les collectionneurs à l'heure actuelle peuvent faire inscrire ce genre d'armes au point de vue sécurité. Le registraire local et le commissaire seront autorisés dans le cas de l'inscription de décider s'il est opportun au point de vue de la sécurité des autres, que quelqu'un possède cette arme.

Conformément à l'article 98 (a) partie 4, autrement dit, le registraire et le commissaire ont le droit de juger les cas individuellement soit pour autoriser, soit pour interdire la possession des armes à feu si la sécurité des autres est en danger ou ne l'est pas. Et cet enregistrement peut être annulé par le registraire local moyennant les mêmes conditions qu'on trouve dans l'article 98 (A) paragraphe 2. Un certificat d'enregistrement peut être révoqué par le commissaire.

La difficulté, c'est que nous n'avons pas pu trouver moyen d'interdire totalement. . . La difficulté, c'est que nous n'avons pas pu trouver moyen d'interdire totalement ce genre d'arme et d'avoir une exception en faveur du collectionneur de bonne foi une sorte d'enregistrement de collectionneur. Nous n'avons pas pu trouver la formule permettant d'établir la ligne de démarcation. Nous avons rencontré les personnes chargées de l'uniformité représentants tous les procureurs généraux des provinces; il y a un mois et demi ici à Ottawa, nous avons rencontré les membres exécutifs de l'Association des chefs de police.

Nous n'avons reçu aucune instance des autorités chargées de l'application de la Loi, soit les procureurs généraux provinciaux ou les chefs de police, à l'appui de l'interdiction absolue dans le cas qui nous occupe. Nous croyons, de toute façon, que l'amendement est

[Text]

might say that if illegal and unwarranted use is made of automatic weapons, which we have not seen so far, within the next year or so, then we would be perfectly willing to reconsider our position.

Mr. Hogarth: Mr. Chairman, may I ask the Minister a question. You spoke of guns other than what would normally be described as machine guns and you referred to automatic hand guns. Are you referring to such things as a Colt .45 automatic?

Mr. Turner (Ottawa-Carleton): Under the terms of your amendment, Mr. Hogarth, do you not cover semi-automatics?

Mr. Hogarth: No.

Mr. Turner (Ottawa-Carleton): Any fully automatic weapon . . .

Mr. Hogarth: . . . with a succession of bullets fired by one pressure of the trigger.

Mr. Turner (Ottawa-Carleton): . . . is one that fires a succession of bullets by one pressure of the trigger.

Mr. Hogarth: And that is a machine gun?

Mr. Turner (Ottawa-Carleton): There are automatic machine guns as well.

Mr. Hogarth: A sten gun is a machine gun. I am just trying to classify one particular weapon, for my terms of reference, that would be an automatic hand gun, firing with one pressure of the trigger, more than one bullet, that would not be a machine gun.

Mr. Turner (Ottawa-Carleton): I can give you a few of those.

Mr. Hogarth: I would like to hear those.

The Chairman: Mr. Chappell.

Mr. Chappell: Mr. Chairman, I can see justification in Mr. Hogarth's concern, but to confiscate these collections, which could be quite valuable, without compensation is indeed a very unusual and harsh proposal. Now I do not think we would be justified in doing that unless the evil we seek to prevent is such that we should take such a strong measure. If there was evidence that there was carelessness in the

[Interpretation]

trop vaste puisque toute arme à feu automatique serait interdite. D'après le point de vue du ministre, je crois que je devrais laisser au Comité le soin de décider; je ne puis accepter l'amendement. Je dirais que si on fait un usage injustifié et inexcusable des armes automatiques, au cours de l'année qui vient, ce qui n'a pas été le cas jusqu'à maintenant, nous serions alors absolument prêts à reconsidérer notre position.

M. Hogarth: M. le président, puis-je poser une question au Ministre? Vous avez parlé de petites armes autres que celles qu'on pourrait appeler des fusils mitrailleurs et si vous avez mentionné les armes de poing. Parlez-vous d'armes comme le Colt .45 automatique?

M. Turner (Ottawa-Carleton): J'ai simplement demandé, monsieur Hogarth, si aux termes de l'amendement, vous ne couvrez pas les armes semi-automatiques?

M. Hogarth: Non.

M. Turner (Ottawa-Carleton): Aucune des armes entièrement automatique . . .

M. Hogarth: Toute arme pleinement automatique qui tirerait une succession de balles par une simple pression de la gâchette . . .

M. Turner (Ottawa-Carleton): . . . est une arme qui tire une succession de balles par pression de la gâchette.

M. Hogarth: Et c'est ça un fusil mitrailleur?

M. Turner (Ottawa-Carleton): Il y a également des fusils mitrailleurs automatiques.

M. Hogarth: Le «Sten gun» est un fusil mitrailleur. J'essaie seulement de classer un type d'arme en particulier, à titre de renseignement personnel, qui serait une arme de poing automatique qui fait feu à une seule pression de la gâchette, plus qu'une balle, et qui ne serait pas un fusil mitrailleur.

M. Turner (Ottawa-Carleton): Je pourrais vous en donner quelques-uns.

M. Hogarth: J'aimerais savoir s'il existe des armes à feu de ce genre.

Le président: M. Chappell.

M. Chappell: Monsieur le président, il me semble que l'inquiétude de M. Hogarth est justifiée mais que l'on confisque ces collections qui peuvent être très précieuses sans accorder aucune indemnisation. C'est, je crois, une proposition bizarre et assez dure. Je ne pense pas que nous soyons justifiés de le faire à moins que le mal que nous essayons de réparer est tel que nous devrions adopter une mesure assez radicale. S'il y avait des

[Texte]

handling of these collections and somehow they got into the wrong hands, I think we would not only be justified but obliged to take such strong moves. But until there is evidence which would justify our doing this, I do not see how we can. I asked about this at the last meeting and I think the answer was that there has not been any evidence to indicate that these guns from the collections are getting into the wrong hands.

Mr. Turner (Ottawa-Carleton): That is so.

Mr. Chappell: That is, machine guns.

Mr. Turner (Ottawa-Carleton): That is so.

Mr. Hogarth: Can you tell us, Mr. Turner, how many machine guns are registered in private hands?

Mr. Turner (Ottawa-Carleton): We could try to find out.

Mr. Hogarth: Might this amendment stand, sir, until we get that information?

The Chairman: Frankly, I am in the hands of the Committee, but my instincts say that the amendment should now be put. What is the feeling of the Committee?

Mr. Woolliams: I think it could be put, but I am not satisfied about one thing that bothers me. What does Mr. Hogarth mean when he says that he can by some mechanical device change one of these automatic guns into something different? I just do not see how that is possible and practical. I do not see how that can be done. Also, I do not know what the effect would be on the sportsmen of the nation.

I am not a gun expert by any means—I do some hunting—but there are those kinds of shotguns that are basically automatic. Of course under the provincial law you would have to plug them, whether they are one kind or another, and they only fire three shots. But they are automatics. You have the same thing with .22s; Browning puts out a .22 that is an automatic. What effect would this amendment have on those kinds of weapons that are used by the public and accepted? I will put all my questions together. I would also like to know what the RCMP think about it. The Minister touched on this and it might have been a good thing to have had one of them here. They have a broad picture of this because they are in every province looking after federal jurisdiction, and in some cases they are looking after the provincial administration as well.

Mr. Turner (Ottawa-Carleton): In preparing these amendments the Department of Justice has not only

[Interprétation]

preuves de négligence de la part des collectionneurs et si de quelque façon elles tombaient entre de mauvaises mains, je crois que non seulement nous aurions raison, mais nous serions obligés de prendre des mesures énergiques. Mais jusqu'à ce qu'il y est des preuves qui justifieraient ces mesures, comment nous pouvons agir ainsi. Je ne vois pas comment. L'autre jour, j'ai posé la question lors de la réunion et on m'a répondu qu'il n'y avait pas de cas concret, de preuves montrant que les armes de ces collections tombent dans de mauvaises mains.

M. Turner (Ottawa-Carleton): C'est exact.

M. Chappell: Nous parlons de fusil mitrailleurs.

M. Turner (Ottawa-Carleton): C'est exact.

M. Hogarth: Pourriez-vous nous dire, M. Turner, combien de mitraillettes sont enregistrées au nom de particuliers.

M. Turner (Ottawa-Carleton): Nous pourrions essayer de le savoir.

M. Hogarth: Cet amendement pourrait peut-être être différé jusqu'à ce que nous ayons ces renseignements.

Le président: Évidemment, je dois m'en remettre au Comité. J'ai bien l'impression que nous devrions le soumettre au vote maintenant.

M. Woolliams: Je crois qu'il devrait être soumis au vote, mais j'aimerais poser deux ou trois questions qui me tracassent. Je ne suis pas convaincu et une question me préoccupe. Que veut dire, monsieur Hogarth, quand il affirme qu'au moyen d'un dispositif mécanique on peut changer les armes automatiques en quelque chose de différent? Je ne vois pas comment cela peut se faire. Aussi, je ne sais pas quelle serait la réaction des sportifs du pays.

Je ne suis pas du tout un expert en armes à feu ou en carabines. Je chasse quelque fois, mais il y a ces carabines qui sont essentiellement automatiques. En vertu de la loi provinciale il faudrait évidemment leur mettre un tampon; même si elles ne lancent que trois balles, ce sont des armes automatiques. Il en va de même pour les carabines de calibre .22, Browning en fabrique une qui est automatique. Quel effet aurait cet amendement sur ces genres d'armes qui sont utilisées par le public et d'usage courant? Je vais résumer mes questions en une seule. J'aimerais savoir ce qu'en pense la Gendarmerie canadienne; peut-être serait-ce une bonne chose d'avoir un représentant de la Gendarmerie ici. La Gendarmerie a une connaissance étendue de la question vu qu'elle est présente dans toutes les provinces pour l'exercice des juridictions fédérales et dans certains cas ils agissent comme policiers provinciaux.

M. Turner (Ottawa-Carleton): En préparant ces modifications, non seulement avons-nous travaillé très

[Text]

worked closely with the provincial attorneys general and the Association of Police Chiefs but throughout the preparation of these amendments it has been in constant touch with the ballistics experts of the Royal Canadian Mounted Police, the Commissioner and Deputy Commissioner. The meeting was held on the premises of the Royal Canadian Mounted Police barracks here at Headquarters Division in Ottawa. These amendments are perfectly satisfactory to the federal police. The point is that the safety measures that I referred to, 98A (4) and 98A (2), provide, in our opinion, at the moment adequate measures for preserving public safety.

Mr. Woolliams: Perhaps I could have Mr. Hogarth's explanation again, because I am not satisfied with it, how he could take machine guns or any automatic and by some mechanical device change them into something different.

Mr. Hogarth: If you look at the definition of firearm in Section 82(1)(b) on page 5 you will note it says:

(b) "firearm" means any barrelled weapon from which any shot, bullet or other missile can be discharged and that is capable of causing serious bodily injury or death to the person, and includes anything that can be adapted for use as a firearm;

Now if you put a bead weld in the breech of a machine gun it cannot be adapted for use as a firearm. It is no longer a firearm and it does not destroy the appearance of the weapon. If you drill two holes on the underside of the barrel it does not destroy the appearance of the weapon—it can still be a collector's item. There is no need for a collector to have in his possession anything that, when stolen, can immediately be used to the detriment of the public. And these things, unless they are out of circulation, do end up in the hands of the underworld. There is every potential for it. I know in one bank robbery some years ago there were no less than three machine guns in the vehicle being used. Now they were not used, they used pistols, but surely we should watch these things very carefully. That is my submission.

I have just one more question for the Minister. Mr. Turner, has the exact provision of this section been drawn to the attention of the Commissioner of the Royal Canadian Mounted Police—that is to say, that machine guns are only restricted as opposed to prohibited weapons?

Mr. Turner (Ottawa-Carleton): Yes, the Commissioner of the Royal Canadian Mounted Police is aware of this provision.

By the way I have just checked with the police. They have over 500,000 certificates of registration

[Interpretation]

étroitement avec les procureurs généraux et les associations des chefs de police, mais nous avons eu une réunion au siège social de la Gendarmerie canadienne à Ottawa et pendant la préparation de ces modifications, nous avons été toujours en contact avec le service des experts en ballistique de la Gendarmerie, avec le Commissaire et son adjoint, de sorte que ces modifications sont parfaitement satisfaisantes à la Gendarmerie canadienne. Les mesures de sécurité que j'ai mentionnées, 98A, paragraphe 4, 98A paragraphe 2, à mon avis fournissent à l'heure actuelle assez de protection au public.

M. Woolliams: Peut-être M. Hogarth pourrait-il nous donner à nouveau des explications parce que je ne suis pas satisfait. Comment peut-on prendre une mitraillette ou une arme à feu automatique et au moyen de dispositifs mécaniques, changer les caractéristiques de ces armes à feu?

M. Hogarth: Si vous jetez un coup d'œil à la définition d'armes à feu, il s'agit de l'alinéa C) du paragraphe (1) de l'article 82; page 5, on dit:

b) «arme à feu» désigne toute arme ayant un canon qui permet de tirer du plomb, des balles ou tout autre projectile et qui est susceptible de causer des blessures corporelles graves ou la mort d'une personne, et comprend toute chose pouvant être adaptée pour être utilisée comme arme à feu;

Évidemment, si vous mettez un bouchon de soudure dans la culasse de l'arme à feu, elle ne peut plus servir d'arme à feu. Ce n'est plus une arme à feu et cela ne change pas l'aspect extérieur de l'arme. Si vous percez deux trous sous le baril, l'arme peut encore être une pièce de collection, et son aspect extérieur n'est pas modifié. Il n'y a aucune nécessité pour le collectionneur d'avoir une arme qui peut être utilisée au détriment du public. Et ces armes, à moins qu'elles ne soient retirées de la circulation, finissent par tomber entre les mains de la pègre. Il y a une forte demande pour ces engins.

Je me souviens d'un vol de banque commis il y a quelques années; il n'y avait pas moins de trois mitraillettes dans l'auto dont ils se sont servis. Elles n'ont pas été utilisées vu qu'on s'est servi de pistolets, mais il est certain que nous devons être très prudents avec ces engins. Voilà l'idée que je soutiens. Je poserais une seule question au Ministre—est-ce que les dispositions exactes de cet article ont été portées à l'attention du Commissaire de la Gendarmerie canadienne, soit que les fusils mitrailleurs sont seulement des armes à autorisation restreinte par opposition aux armes défendues?

M. Turner (Ottawa-Carleton): Oui, le commissaire de la Gendarmerie canadienne connaît la présente disposition. Soit dit en passant, je viens de vérifier avec la police, il y a plus d'un demi-million de certificats d'enregistrement; il faudrait des mois et des mois pour classer cela en armes automatiques et armes non auto-

[Texte]

and it would take months to classify those into automatic weapons and non-automatic weapons. Every certificate would have to be analysed and it would take months. Therefore we cannot give you that information.

Mr. Hogarth: In short, they are not classified by kind?

Mr. Turner (Ottawa-Carleton): That is right.

Mr. Woolliams: I would like to follow that through. I just cannot be satisfied. If we are going to permit them all as collector's items or for use by sportsmen—the rifle that I mentioned and also the shotgun—and are going to have that kind of a law once you bead them and drill holes in them, you might just as well destroy the weapon. You might as well make it totally prohibitive and compensate these people.

It seems to me that that would just destroy the very purpose of the amendments we are allowing. I am inclined to go along with the Minister this morning in this regard. If there should be—and there is no evidence before this Committee as yet—a time when automatics are used in bank robberies, holdups with violence and so on—and there is no evidence before us yet that automatics are used—surely Parliament is not that decadent an institution that it could not move, if that situation should arise, and make the necessary amendments to control the situation.

But I am inclined once the Minister has assured me and I am satisfied—and I am only speaking for
● 1000

myself—that he has discussed it with the RCMP and those who have had a lot of experience in this field, to go along with the amendments as drawn by the Department.

Mr. MacGuigan: In looking at subsection (e), it occurs to me that the other items which are now there are not the types of things that collectors would be likely to have and I would like to put the question to the Minister whether putting this type of automatic weapon in would really change the character of the weapons that are now in that section. Could he indicate at this time whether there is any intention at present of including any particular kinds of weapons under (e)(iii) where considerable power is left to the Governor in Council?

Mr. Turner: We have not drawn that list yet. It will be drawn in conjunction with the RCMP. We can think of a number of weapons that will go on that list immediately—bazookas, anti-tank guns . . .

An hon. Member: Atom bombs!

[Interprétation]

matiques. Il faudrait que chaque certificat soit analysé ce qui prendrait des mois. Nous ne pouvons donc pas vous fournir ces renseignements.

M. Hogarth: En somme, ils ne sont pas classés par catégories.

M. Turner (Ottawa-Carleton): C'est exact.

M. Woolliams: Je voudrais rester sur ce sujet. Je ne suis pas du tout satisfait. Si nous les autorisons toutes comme pièces de collection ou pour l'usage des sportifs, le fusil que j'ai mentionné et aussi la carabine, et si nous devons avoir une loi de ce genre une fois que les armes sont soudées à la culasse ou percées de trous, autant détruire l'arme. Mieux vaudrait les défendre complètement et indemniser ces gens.

Il me semble que cela irait à l'encontre de l'objectif de l'amendement. Je suis porté à penser de la même façon que le ministre ce matin. S'il devait y avoir une circonstance où des armes automatiques seraient utilisées pour des vols de banque, des holdups avec violence, aucune preuve n'a encore été présentée au Comité établissant qu'on se sert d'armes automatiques. Je suis certain que le Parlement n'est pas une institution décadente à ce point qu'il ne pourrait pas intervenir, advenant que la chose se produise, et apporte les modifications nécessaires pour maîtriser la situation.

Mais je suis porté à croire, du fait que le ministre me l'a assuré et étant conscient que je ne parle qu'en mon

nom. Pour moi je suis convaincu que le ministre a discuté de cette question avec la Gendarmerie canadienne, et avec ceux qui ont beaucoup d'expérience en ce domaine pour être d'accord avec l'amendement qu'a préparé le ministère.

M. MacGuigan: Si l'on jette un coup d'oeil au paragraphe 1 (e), il me semble que ce qui est écrit là ne correspond pas à ce que voudrait avoir un collectionneur et j'aimerais demander au Ministre si le fait d'inclure ce genre d'arme automatique ne changerait vraiment pas la nature des armes déjà comprises dans l'article. Pourrait-il nous dire s'il est question, à l'heure actuelle, d'inclure quelques armes à feu particulières au sous-alinéa (iii) de l'alinéa (e) qui donne au Gouverneur en conseil un grand pouvoir?

M. Turner (Ottawa-Carleton): Nous n'avons pas encore préparé cette liste. Elle le sera en collaboration avec la Gendarmerie canadienne. Nous pouvons songer à bon nombre d'armes à feu, évidemment, qui seraient incluses dans cette catégorie—des bazookas, des canons antichars . . .

Une voix: Des bombes atomiques!

[Text]

[Interpretation]

Mr. Hogarth: Might they not be collectors items too?

M. Hogarth: Ces armes pourraient-elles aussi être des pièces de collection?

Mr. Turner (Ottawa-Carleton): No, they are not.

M. Turner (Ottawa-Carleton): Non, pas nécessairement.

The Chairman: Have you finished, Mr. MacGuigan?

Le président: Avez-vous terminé, monsieur MacGuigan?

Mr. MacGuigan: Yes.

M. MacGuigan: Oui.

Mr. Hogarth: Regina versus Marcotte, where two policemen were killed. It was in 1964, I believe.

M. Hogarth: La Reine contre Marcotte, où deux policiers ont été tués. Je crois que c'est arrivé en 1964.

Mr. Turner (Ottawa-Carleton): Have you any other case, Mr. Hogarth?

M. Turner (Ottawa-Carleton): Avez-vous d'autres cas, monsieur Hogarth?

Mr. Hogarth: Well, we have cases where sub-machine guns were used in bank robberies but I do not know the names. In the Santa Claus murder two policemen were killed by a machine gun.

M. Hogarth: Nous avons des cas où l'on s'était servi de mitraillettes dans des vols de banque, mais je ne me souviens pas du nom de ces armes. Le cas de l'assassin déguisé en Père Noël où deux policiers ont été tués par une mitraillette.

Mr. Turner: It is a common weapon used as a handgun. The only case we have been able to find is the one you cite—Marcotte.

M. Turner (Ottawa-Carleton): C'est une arme ordinaire que l'on utilise comme revolver. Le seul exemple que nous pouvons donner c'est justement la cause Marcotte.

Mr. MacEwan: I just want to ask the Minister as a point of interest, Mr. Chairman, whether he received submissions from the DCRA and other associations representing the sports clubs of this country in the matter of automatic weapons and if so, what were their submissions?

M. MacEwan: J'aimerais simplement demander au ministre s'il aurait reçu de la part de la DCRA et d'autres associations qui représentent les clubs sportifs dans le pays, des mémoires au sujet des armes automatiques, et si c'est le cas, quelles étaient leurs recommandations?

Mr. Turner (Ottawa-Carleton): They did not express any opinion because it was not included in the draft.

M. Turner (Ottawa-Carleton): Non, on n'a exprimé aucune opinion particulière là-dessus du fait qu'il n'a pas été question dans le projet de loi.

The Chairman: Is the Committee ready for the motion? Mr. Ouellet?

Le président: Est-ce que le Comité est prêt à passer à la mise au voix?

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M. Ouellet: Je voudrais seconder l'amendement de M. Hogarth. Dans le communiqué de presse émis par le ministre, il est dit que les dispositions du Code criminel relatives aux armes à feu et aux armes offensives devraient être modifiées de manière à augmenter, pour des raisons de sécurité publique, l'efficacité du contrôle de ces armes et de leur utilisation. Et même de permettre au gouverneur en conseil d'augmenter, par décret, la liste des armes prohibées et des armes à autorisation restreinte. On prévoit donc déjà que, dans un avenir plus ou moins rapproché, le gouverneur en conseil pourra inclure dans sa liste des armes prohibées, les nouvelles armes, utilisées par les groupes de bandits.

Il me semble assez curieux que l'on ait des objections à inclure dans la liste des armes prohibées, les armes du genre mitrailleuses. L'argument avancé la semaine dernière par M. Scollin, alors qu'il

Mr. Ouellet: I wish to second Mr. Hogarth's amendment. In the press report handed out by the Minister, it is said that the provisions of the Criminal Code on fire-arms and offensive weapons should be amended so as to increase, for reasons of public security, the efficiency of the control of these arms and their use. Furthermore, to allow the Governor in Council to increase, by decree, the list of prohibited arms and of restricted weapons. Thus, we can already foresee that before too long, the Governor in Council will be able to include in this list of prohibited arms, new weapons used by groups of bandits.

It seems other curious that people object to include machine guns in the list of prohibited arms. The argument which was put forward last week by Mr. Scollin when he objected to a amendment similar to that

[Texte]

s'objectait à un amendement semblable à celui que M. Hogarth suggère aujourd'hui, était qu'une telle mesure serait préjudiciable à des collectionneurs. Moi je dis: «Tant pis pour les collectionneurs». Je pense que ce n'est pas un argument de poids. On vient de demander ce matin, combien de personnes seraient affectées à ce service, et il semble que les autorités du ministère de la Justice ne le savent pas.

L'argument majeur contre cet amendement est qu'il peut nuire aux collectionneurs. On demande: Combien y a-t-il de collectionneurs? On ne peut pas nous le dire. Je trouve que c'est un argument bien faible à comparer aux dangers très graves que l'on peut courir à laisser à des gens la possibilité d'acheter ou d'avoir en leur possession des mitrailleuses. Et je ne peux pas concevoir que l'on classe la mitrailleuse comme arme à autorisation restreinte, et qu'on ne la mette pas carrément dans les armes prohibées dès maintenant. Pour ces raisons je seconde l'amendement de M. Hogarth.

Mr. Turner (Ottawa-Carleton): Of course, the purpose of the amendments is to combat crime. We are of the opinion at the moment that the clauses of the Bill are sufficient to do that. We have no evidence from the police forces of this country that there is any present risk of definitions currently being used contributing to crime. If we were to get that evidence then, of course, we would reassess the position.

Mr. Chappell: Mr. Chairman, if you could plug holes in these weapons to allow the gas to escape and thereby render them impotent it would seem a simple answer, but surely we would have to know whether any tampering would render them useless from a collectors' standpoint. I do not know, but certainly you cannot tamper with coins and stamps without destroying their value. I have read enough about antiques to know that some of the early automatics can be extremely valuable and I think it might be helpful, particularly if it should come up in the House again, to hear from some person whether tampering with these guns would be equivalent to compromising them.

The Chairman: Thank your, Mr. Chappell. Mr. Schumacher?

Mr. Schumacher: May I say a brief word, Mr. Chairman? I believe I suggested before that this type of amendment does not appear to get at the cause of these types of weapons being in the possession of bank robbers and other criminals. I do not think the amendment is consistent with the views of most Canadians who feel that they should have some liberty to own certain types of articles so long as they do not hurt other citizens, and I do not think there has been any evidence or even any suggestion that any of these weapons come from private collections into the field of crime.

[Interprétation]

presented by Mr. Hogarth, was that such a measure would injure collectors. I do not think this argument carries any weight whatsoever. "Too bad for the collectors!" is what I say. It was asked this morning how many people would be assigned to that service and it seems that the authorities of the Department of Justice do not know.

The main argument here against the amendment is that this could injure collectors. How many collectors are there? Nobody can tell us. I think that this is a very weak argument as compared to the very great dangers that can result from the possibility of buying or possessing machine guns. And I certainly cannot conceive that machine guns be classified as restricted weapons and not included purely and simply in the list of prohibited arms as of now. For these reasons I wish to second Mr. Hogarth's amendment.

M. Turner (Ottawa-Carleton): Le but de l'amendement était évidemment celui de combattre le crime. Nous sommes d'avis, à l'heure actuelle, que les articles du bill sont suffisants pour ce faire. Les forces de l'ordre du pays n'ont aucune preuve que les définitions de la loi puissent être interprétées de façon à contribuer au crime. De toute façon, si jamais nous en avons la preuve, la situation serait certainement prise en considération.

M. Chappell: Monsieur le président, j'ai l'impression que le plus simple serait de perforer ces armes pour faire échapper le gaz et les rendre ainsi inutilisables, mais il faut s'assurer que ce genre d'intervention ne rende ces armes inutiles, du point de vue du collectionneur. Je ne sais si je me trompe, mais on ne peut jamais tripoter des timbres ou des pièces de monnaie sans détruire leur valeur. J'ai lu suffisamment d'articles sur les objets antiques pour savoir que certaines armes anciennes sont extrêmement précieuses, et je crois qu'il serait utile de voir quelqu'un venir ici et nous dire si ce genre de choses amoindrirait la valeur de ces armes.

Le président: Merci, monsieur Chappell. Monsieur Schumacher?

M. Schumacher: Permettez-moi de dire brièvement quelque chose, monsieur le président. Je crois avoir déjà mentionné que ce genre d'amendement ne semble pas empêcher que ces genres d'armes à feu parviennent aux mains des voleurs de banque et d'autres criminels. Je ne crois pas que cet amendement concorde avec l'opinion de la majorité des Canadiens, de jouir d'une certaine liberté de posséder certains articles, à condition que ces objets ne blessent pas les citoyens, et je doute fort qu'on puisse prouver et encore moins suggérer que des armes appartenant à des collectionneurs privés aient servi à perpétrer des crimes.

[Text]

Reference has been made to the Marcotte case. There is no evidence, even in that singular case, that the weapons used came from private collections, and I think if we are going to proceed with this type of amendment we are getting altogether too restrictive and are likely to build up a law that probably will be very unpopular and, to a large extent, unenforceable. I think this Committee should express its opposition to the amendment.

Mr. McQuaid: I have just one question for the Minister, Mr. Chairman. Did I understand you correctly, sir, that this specific matter had been discussed with the RCMP and that they are not concerned about it?

At first blush this amendment of Mr. Hogarth's appeals to me, because I think our prime concern should be to protect the public. If I knew for sure that the RCMP had discussed this particular question of repeater rifles and are satisfied that there is no danger, either to them or to the public, I would be inclined to . . .

Mr. Turner (Ottawa-Carleton): When we were preparing the former Bill C-195, and certainly when we were preparing the revisions to Bill C-150—and there have been substantial revisions in the gun law between Bills C-195 and C-150—the members of the Royal Canadian Mounted Police were constantly consulted. They were consulted first about the definition of the weapons, and the divisions into prohibited and restricted. They were consulted when we discussed the Governor in Council Sections, both Sections (iii), and they have been fully apprised of the drafting of every section in the gun law and they are satisfied with it.

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To say there is no risk—of course we are not going so far as to say that. You balance the probabilities here, between rights on the one hand and public safety on the other. We are suggesting to the Committee that it is the view of the law enforcement officers of this country they do not see a present risk in the private possession of automatic weapons in collections sufficient to warrant prohibiting it under the Code.

Mr. Murphy: Mr. Chairman, in view of what the Minister has just said, may I ask Mr. Hogarth to hold the amendment for the time being?

The Committee is being asked to balance the rights of private holders at the present time against the rights of the public to safety, and we have no information whatsoever before us on how many rights are being affected. We do not know if one collection or a thousand collections are going to be affected. Without that knowledge I do not know how we can balance those rights, one against the other.

[Interpretation]

On a parlé de l'affaire Marcotte. Même dans ce dernier cas, on n'a pu prouver que les armes utilisées provenaient des collections privées, et si nous voulons modifier la loi de cette façon, je pense que ces restrictions, nous serons en présence d'une situation qui sera très peu populaire et hautement inapplicable. Ce comité doit, à mon avis, s'opposer à cet amendement.

M. McQuaid: Monsieur le président, j'ai une simple question à adresser au ministre. Ai-je bien compris que cette question avait été étudiée avec la Gendarmerie et que la Gendarmerie ne s'en préoccupe pas trop? À première vue, il me semble que la modification proposée par M. Hogarth m'intéresse parce que nous devons avant tout protéger le public. Si j'étais certain que la Gendarmerie du Canada avait étudié cette question des mitraillettes et était satisfaite qu'il n'y avait aucun danger pour le public, je serais porté à . . .

M. Turner (Ottawa-Carleton): La Gendarmerie, lorsque nous préparions le précédent bill C-195, et nous préparions bien sûr les modifications au bill C-150—et les modifications en ce qui concerne la loi des armes à feu entre les bills C-195 et C-150 sont importants—la Gendarmerie du Canada était constamment consultée. Tout d'abord, on les a consultés à propos de la définition des armes et de la différence entre les termes «prohibés et restreints». On les a consultés lors de la discussion des articles concernant le gouverneur en conseil, c'est-à-dire les articles et les sous-alinéas et ils ont été tout à fait d'accord avec la rédaction de tous les articles de la loi relative aux armes à feu.

Bien sûr, nous n'allons pas jusqu'à dire qu'il n'y a pas de risques. Il faut peser les probabilités, et trouver un juste milieu entre les droits, d'une part, et la sécurité du public, d'autre part. Nous signalons au Comité que les agents de la sûreté publique de ce pays n'estiment pas que la possession d'armes automatiques dans des collections par des particuliers présente à l'heure actuelle un danger suffisant pour justifier qu'on la rende illégale aux termes du Code.

M. Murphy: Monsieur le président, vu ce que vient de dire le Ministre, je voudrais demander à M. Hogarth de réserver la modification pour le moment. Le Comité doit actuellement peser les droits du particulier par rapport au droit qu'a le public à la sécurité. Or, nous n'avons ici aucun renseignement qui nous permette de savoir combien de droits vont être visés. Nous ne savons pas s'il y a une collection ou s'il y en a mille. Tant que nous ne le saurons pas, je ne vois pas très bien comment nous pourrions faire une comparaison entre les droits des particuliers et ceux du public.

[Texte]

[Interprétation]

The Chairman: Are there any further comments?

Le président: Y a-t-il d'autres observations?

Mr. Hogarth: I might agree, if the Commissioner of the Royal Canadian Mounted Police is not concerned about this specific problem and it has been specifically drawn to his attention, that it ill-behoves a member of Parliament, who is not so directly concerned, to press the amendment, but I think we should hear, by letter or otherwise, or by letter directly to the Minister, specifically referring to the clause, that he is not concerned.

M. Hogarth: Je pourrais en convenir, si le commissaire de la Gendarmerie royale ne se préoccupe pas de ce problème et qu'on l'ait réellement porté à son attention, il sied mal à un député, qui n'est pas impliqué aussi directement, d'insister pour faire adopter cette modification. Mais j'estime que le commissaire devrait nous indiquer, par lettre ou autrement, ou encore en écrivant directement au Ministre, et en mentionnant clairement cet article, que le problème ne l'inquiète pas.

The Chairman: I think we have had ample discussion. I am quite sure there will be many clauses with which members cannot be completely satisfied because of the lack of some type of information which may be very difficult to ascertain, but if we proceed on this basis it is going to make it impossible to complete the study of this bill.

Le président: J'estime que nous avons suffisamment examiné la question. Je suis convaincu qu'il y aura bien des cas où certains des membres du Comité ne pourrions être entièrement d'accord avec un article, à cause de l'absence de certains renseignements peut-être très difficiles à obtenir. Mais dans ces conditions, nous n'en finirons jamais avec l'étude de ce Bill.

Mr. Blair: Mr. Chairman, I would have thought that the Minister's statement, which was made after due deliberation and consultation with the law enforcement authorities, should satisfy the question of whether or not the law enforcement authorities feel this to be a proper provision to have in the bill.

M. Blair: Monsieur le président, j'aurais pensé que la déclaration du Ministre, qu'il a faite après un entretien et en consultation avec les autorités chargées d'appliquer la loi, suffirait à résoudre la question qui consiste à savoir si oui ou non ces autorités jugent bon d'incorporer cette disposition dans le Bill.

I came in when another question was being answered and it would appear to me from the answer given that it would be almost impossible to give a complete statistical breakdown of the number of private collections affected. With all respect to my colleagues, I suggest that this is the kind of thing that would just tie us up and prevent our disposing of this whole section. I would rather favour proceeding with a decision on this point at the present time.

Je suis arrivé pendant que l'on répondait à une autre question, mais il me semble, d'après la réponse, qu'il serait presque impossible de faire une ventilation statistique complète du nombre de collections privées qui seraient visées. Sauf le respect que je dois à mes collègues, j'estime que ce genre de chose ne ferait que nous restreindre et nous empêcher d'en finir avec l'étude de cet article. J'estime que nous ferions mieux de prendre dès maintenant une décision à cet égard.

Mr. Hogarth: Mr. Chairman, I do not want to be misunderstood. I am not suggesting that the RCMP have not reviewed the provision. My concern is whether this specific problem has been drawn to their attention. I am not doubting the Minister's statement that they have reviewed the provision, but whether this specific situation has been drawn to their attention. These are complex amendments, and it may be that that was overlooked.

M. Hogarth: Monsieur le président, je veux que l'on me comprenne bien. Je ne dis pas que la Gendarmerie royale n'a pas étudié cette disposition. Mais je me demande si ce problème particulier a été soumis à son attention. Je ne mets pas en doute la déclaration du Ministre selon laquelle la Gendarmerie royale a examiné cette disposition, mais je ne sais si l'on a porté à son attention cette situation particulière. Ces modifications sont assez complexes, et l'on peut n'avoir pas étudié la question assez à fond.

The Chairman: Is the Committee ready for the question?

Le président: Le Comité est-il prêt à passer au vote?

Amendment negatived.

La modification est rejetée.

Clause 6(1)—Proposed Section 82(e) and (g) agreed to.

L'alinéa (1) de l'article 6 du Bill, les sous-alinéas e) et g) du paragraphe 82 sont adoptés.

On Clause 6(1), proposed Section 84—While attending a public meeting; proposed Section 85—Carrying concealed weapon

A l'alinéa (1) de l'article 6 du Bill, du paragraphe 84 proposé—Possession d'arme à une assemblée publique; du paragraphe 85 proposé—Port d'une arme dissimulée.

[Text]

Mr. MacGuigan: We stood proposed Section 84 and the following proposed section for the Minister's consideration. I would like to hear what he has to say about them.

Mr. Turner (Ottawa-Carleton): With the consent of the Committee I want to deal with proposed Sections 84 and 85 together, because I think Mr. MacGuigan so dealt with them.

As I understood his point, he felt that the definition of "weapon" in both those sections was so wide as to imply that a neutral article such as a nail-file, when carried concealed, or when carried to a public meeting, might be treated as a weapon.

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The definition of "weapon", of course, is found on page 3 of the bill.

(29) "offensive weapon" or "weapon" means

(a) anything that is designed to be used as a weapon, or

(b) anything that a person uses or intends to use as a weapon, whether or not it is designed to be used as a weapon,

Proposed sections 84 and 85 duplicate in substance present Sections 87 and 84 of the Criminal Code. There is no change in the substance of the Sections. Mr. MacGuigan, I suppose, is theoretically accurate, but I think it would be highly unlikely—and we have not record of any cases since these two sections have been enforced in the Criminal Code—that the Crown would prosecute in the circumstances he described. In other words, a man carrying a concealed article that might be used as a weapon and being prosecuted for carrying a weapon, or a man carrying an article that might be used as a weapon when going to a public meeting and then being found with it at a public meeting. Even if the Crown were to attempt to prosecute—and we have not found any cases—we think it is highly unlikely that a court would be prepared to construe the sections in this way.

The reason these sections have been in the Code, of course, is that particularly at public meetings there is a tendency for tempers in the mass, in a crowd, to escalate. This is the reason that carrying a concealed weapon to a public meeting has been a crime for years and years. We have not had drawn to our attention any problem in connection with these sections in the past.

I might ask him just how he would plan to resolve the problem. It is one that we also contemplated. We think it is an academic one. It has not plagued the country during the years these two sections have been enacted. If he has any suggestions on how it should be resolved we would be glad to hear them.

[Interpretation]

M. MacGuigan: Nous avons réservé l'article 84 et l'article 85 proposés afin que le Ministre puisse les étudier, et j'aimerais bien savoir ce qu'il en pense.

M. Turner: Si le Comité le permet, j'aimerais traiter des articles 84 et 85 ensemble, comme l'a fait, je crois, M. MacGuigan.

Si j'ai bien compris, il trouvait que la définition du terme «arme» dans ces deux articles était si large que l'on pourrait considérer comme une arme un instrument aussi inoffensif qu'une lime à ongles, lorsqu'on la dissimule sur soi ou qu'on l'emporte à une assemblée publique.

Bien entendu, on donne la définition du terme «arme», à la page 3 du Bill:

(5) «arme offensive» ou «arme» signifie

a) toute chose destinée à être employée comme une arme, ou

b) toute chose qu'une personne emploie ou entend employer comme une arme, qu'elle soit ou non destinée à servir d'arme;

Les articles 84 et 85 proposés font double emploi avec les articles 87 et 84 du Code criminel. Il n'y a pas de changement dans la substance de ces articles. Monsieur MacGuigan, je le suppose, a raison en théorie, mais il est, à mon avis, fort improbable—et le cas ne s'est d'ailleurs jamais produit depuis que ces deux articles sont entrés en vigueur dans le Code criminel—que la Couronne entame jamais des poursuites dans les circonstances décrites par M. MacGuigan. Autrement dit, le cas d'une personne qui porterait un article dissimulé propre à servir d'arme et serait poursuivie pour port d'arme, ou celui d'une personne qui emporterait à une assemblée publique un article propre à servir d'arme et serait découverte en possession de cet article à une assemblée publique. Même si la Couronne essayait d'entamer des poursuites—et le cas ne s'est jamais produit—il est fort improbable, à notre avis, qu'un tribunal soit prêt à interpréter ces articles de cette manière.

Si ces articles figurent dans le Code, c'est, bien sûr, parce que, lors des assemblées publiques, les actes d'humeur de la foule ont tendance à gagner. C'est pourquoi, depuis bien des années le port dissimulé d'une arme lors d'une assemblée publique est considéré comme illégal. On ne nous a pas cité de difficultés causées par le passé, par les dispositions de ces articles.

Je pourrais demander à M. MacGuigan comment il résoudrait la question? C'est un problème que nous avons aussi étudié, et nous estimons qu'il est purement théorique. Il n'a posé aucun problème au pays depuis que ces deux articles sont entrés en vigueur. Si M. MacGuigan a une solution à nous proposer, nous serions très heureux de l'entendre.

[Texte]

Mr. MacGuigan: Mr. Turner, the simplest suggestion I could make would be to add the word "unlawfully" proposed to Sections 84 and 85. I have considered various possibilities and they all founder on the definition of "weapon" in the defining section. Without changing that definition, which we have already passed, I do not know how to avoid all of the consequences, but the insertion of the word "unlawfully" in proposed Sections 84 and 85 would go some of the way. It would at least solve the problem where the person used one of these neutral objects in self-defence.

Mr. Gilbert: May I ask Mr. MacGuigan how the word "unlawfully" fits in here?

Mr. MacGuigan: In the case of self-defence, the person who used one of these neutral objects would certainly be using it lawfully, and so would not be convicted. Whereas, without that word, he might very well be convicted of this as a crime of absolute liability, even though he validly defended himself.

Mr. Gilbert: It is certainly an academic approach.

Mr. Woolliams: The word "unlawfully" has some attraction. I think, however, we have overlooked one thing here. I agree with the Minister that there can be psychological mass hysteria at meetings, or at riots, where that kind of weapon may be used, but I think you have to look at the words of the section, which are what the courts will interpret: Anything that a person uses or intends to use as a weapon.

Surely if we take that kind of weapon as used in the ordinary course, such as a nail-file for one's own use, it is not a weapon, and there would have to be—and this, I am sure, is how any court would

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interpret it—some overt act. The person would have to take that nail-file and go forward and do some overt act, which is what you mean by intention; and that is where *mens rea* enters into it.

I think the *mens rea* is written in the word "intention". I think we are protected in spite of the fact that my good friend has used the word "unlawful". I do not think it would add anything and I do not think it would do any harm, but I do not think there is anything wrong with the section. I will repeat that the courts would interpret the word "intends" in its broad sense and for the protection of the individual himself, and it seems to me they could only possibly get a conviction where those things were used in fact in the commission of an overt act as if they intended to use them as a weapon to do some bodily injury to somebody.

[Interprétation]

M. MacGuigan: Monsieur Turner, la proposition la plus simple que je puisse faire, c'est d'ajouter aux articles 84 et 85 proposés le terme «illicitement». J'ai envisagé diverses solutions, mais, elles s'effondrent toutes à cause de la définition donnée au terme «arme» dans l'article relatif aux définitions. Je ne vois pas comment nous allons pouvoir éviter toutes les conséquences sans changer cette définition, que nous avons déjà adoptée, mais, si nous insérions le terme «illicitement» dans les articles 84 et 85, cela résoudrait en partie le problème—du moins dans les cas où une personne se sert de l'un de ces objets inoffensifs en légitime défense.

M. Gilbert: Je voudrais simplement demander à M. MacGuigan ce que le terme «illicitement» viendrait faire là-dedans.

M. MacGuigan: Dans un cas de légitime défense, la personne qui se servirait de l'un de ces objets inoffensifs s'en servirait assurément de façon licite, et ne pourrait donc être condamnée. Alors que, sans ce terme dans la loi, la personne pourrait très bien être condamnée comme étant entièrement responsable, alors qu'elle n'avait fait que se défendre de façon légitime.

M. Gilbert: C'est assurément une question purement théorique.

M. Woolliams: Le terme «illicitement» est assez intéressant. Toutefois, je crois que nous avons négligé un facteur ici. Je suis d'accord avec le ministre: il peut se produire des cas d'hystérie collective lors d'une assemblée, ou d'une émeute, où l'on se servirait d'instruments de ce genre, mais je crois qu'il faut bien lire les termes de l'article sur lesquels se fondera l'interprétation du tribunal: «toute chose qu'une personne emploie on entend employer comme une arme».

Assurément, si l'on considère ce genre d'objet dans son usage normal—par exemple, une lime à ongles pour usage personnel—ce n'est pas une arme, et il faudrait qu'il y ait un acte ouvert; je suis certain que tout

tribunal l'interpréterait de cette façon. Il faudrait que la personne prenne cette lime à ongles et commette un acte ouvert—c'est ce que vous voulez dire par «intention»: et c'est là que la *mens rea* entre en ligne de compte.

Et il me semble que le *mens rea* se trouve dans le mot «intention» de l'article. Je pense que nous sommes protégés en dépit du fait que mon excellent ami ait utilisé le mot «illégal». Je ne pense pas que cela ajouterait quoi que ce soit. Je ne pense pas non plus que cela ferait du tort mais je ne vois rien de mal dans cet article. Je répète que les tribunaux interpréteraient le mot «à l'intention» dans son sens large et pour la protection de l'individu lui-même. Et il me semble qu'on ne pourrait avoir une condamnation que si une personne voulait se servir de cet objet comme arme.

[Text]

Mr. MacGuigan: Mr. Chairman, I recognize this problem is only apt to arise if this object is actually used as a weapon. In the previous session I suggested that even there there are two cases when the results might still be unfortunate. First, if the person used this in self-defence. Even though his use in self-defence could be valid, he could still be convicted under these sections. Second, he could be convicted under these sections if in a situation he used it aggressively and not in self-defence. He would have a double liability imposed on him in such a situation, and it does not seem to me that Clauses 84 and 85 really intend to impose double liability.

Mr. Valade: I would like to ask a question here as a layman for clarification. Could that single article be invoked against somebody notwithstanding the other clauses? Suppose that someone at a political meeting, for instance, is carrying a weapon and he is a member of a private security agency. If this single clause can be interpreted or can be given as an excuse for having someone arrested, then certainly it can cause an injury to his reputation by his being accused and he could be called before the courts because the word "unlawful" is not being considered in this clause. This is just to clear up the interpretation.

The Chairman: Thank you, Mr. Valade.

Mr. Valade: Is my question clear?

Mr. Turner (Ottawa-Carleton): Yes, Mr. Valade. The risk is minimal. We do not think that the addition of the words "unlawfully" or "without lawful excuse" would add anything to it. We hesitate very much to throw in words that will change sections that have met with public approval over the years and have also met with the approval of the law enforcement officers. We are dealing with a penal statute and this is something which we do not tamper with lightly, and certainly not without consultation on matters of public order that relate to the provincial Attorney General as well. We cannot recall a prosecution under the circumstances described by Mr. Valade.

Mr. Valade: No, but now that the new bill is being implemented it could be used.

Mr. Turner (Ottawa-Carleton): No, these are a repetition of Sections 84 and 87 in the present Code.

Mr. Valade: My point, Mr. Chairman, was that I am sure in the courts—of course, the other articles would come into the discussion and the judge would appreciate these—that single article could be used by a police officer to have someone arrested.

Mr. Turner (Ottawa-Carleton): It has never been used so far.

[Interpretation]

M. MacGuigan: Monsieur le président, je reconnais que ce problème ne peut se présenter que si l'objet est effectivement utilisé comme arme. Lors de la précédente session, j'ai suggéré que même là, il y a deux cas dont les résultats peuvent être malheureux. Premièrement, si la personne s'en servait pour se défendre, elle pourrait encore être condamnée en vertu de ces articles. Et deuxièmement, lorsqu'une personne s'en sert en dehors du cas de légitime défense, elle peut être condamné aussi en vertu de cet article. Dans ce dernier cas, il y aurait une double inculpation or il ne me semble pas que les Articles 84 et 85 visent à imposer une double responsabilité.

M. Valade: Simplement pour ma gouverne personnelle, est-ce que ce seul article pourrait être invoqué contre quelqu'un? Supposons que quelqu'un dans une réunion politique, soit armé et soit membre d'une agence de sécurité. Pourrait-on se servir de cet article pour l'arrêter et le conduire devant les tribunaux, simplement parce que le mot «illégal» n'est pas dans cet article. C'est une simple question pour éclairer l'interprétation.

Le président: Merci, monsieur Valade.

M. Valade: Est-ce que ma question est claire?

M. Turner (Ottawa-Carleton): Oui M. Valade. Il y a très peu de risques. Nous ne pensons pas que l'addition des mots «illégal» ou «sans raison légale» ajouteraient grand chose. Nous hésitons beaucoup à introduire des mots susceptibles de changer des articles qui ont été approuvés par le public au cours des années et qui ont aussi été approuvés par les autorités policières du pays. Nous traitons de justice pénale et c'est quelque chose que nous ne voulons pas prendre à la légère et nous ne voulons certainement pas modifier des articles sans consultation, sur des sujets d'ordre public qui concernent aussi les procureurs généraux des provinces. Nous ne connaissons aucune inculpation dans les circonstances décrites par M. Valade.

M. Valade: Non, mais maintenant que l'on introduit un nouveau bill, on pourrait l'ajouter.

M. Turner (Ottawa-Carleton): Non, ce sont des répétitions des articles 87 et 85 du Code criminel actuel.

M. Valade: Oui, mais dans les tribunaux évidemment les autres articles seraient étudiés, mais en ce qui concerne l'accusation même, un policier pourrait s'en servir pour faire arrêter quelqu'un.

M. Turner (Ottawa-Carleton): Ça ne s'est jamais produit.

[Texte]

Mr. Valade: No, but this is a new bill and a new clause.

Mr. MacGuigan: Mr. Chairman, I want to record my opposition to the amendement.

Clause 6, proposed Section 84, agreed to on division.

Mr. MacGuigan: Mr. Chairman, I also want to record my opposition to proposed Section 85.

Clause 6, proposed Section 85, agreed to on division.

On Clause 6, proposed section 87:

Delivering firearms to person under 17 years.

Mr. Turner (Ottawa-Carleton): Mr. McCleave objected to the age of 17 and he was transmitting to the Committee the representations of Mr. Passmore and Commissioner Nicholson. In his letter, Commissioner Nicholson speaks of driver's licences being granted at age 16. We cannot argue philosophically about this but we are willing to go some way towards those representations and wonder what the Committee would think of making it age 16.

The Chairman: Mr. Ouellet?

Mr. Ouellet: I think it was argued that age 17 will conflict with the issuing of some provincial permits. What is the age for a provincial permit? Is it 16 or does it go below 16?

Mr. Turner: It varies from province to province, Mr. Ouellet, but 16 is the general age. In other words, we would be willing to consider that in respect to all the sections in which age 17 is found that we could use age 16 as we got to it.

The Chairman: Mr. Murphy?

Mr. Murphy: That is what I was just going to ask. The same matter comes up in subclause (7) of Clause 97 on page 13.

Mr. Turner: That is right. I could read the amendment that I am sure Mr. McCleave, or somebody on his behalf, would want to introduce.

Mr. Murphy: While we are on this, Mr. Chairman, this is the proper time to speak to subclause (7) of Clause 97?

The Chairman: Mr. Murphy, I think it might be in order if we were to dispose of Clause 87 first.

Mr. Chappell: Mr. Chairman, may I speak on Clause 87?

The Chairman: Yes. Mr. Chappell.

[Interprétation]

M. Valade: Oui, mais c'est un nouveau bill et un nouvel article.

M. MacGuigan: Monsieur le président, je désire déclarer mon opposition à l'amendement.

Article 6 du Bill relatif au nouvel article 84 du Code, adopté à la majorité.

M. MacGuigan: Je déclare m'opposer également à l'article 85.

Article 6 du Bill relatif au nouvel Article 85 du Code, adopté à la majorité.

Article 6 du Bill relatif au nouvel Article 87 du Code:

87. Livraison d'une arme à feu à une personne de moins de 17 ans.

M. Turner (Ottawa-Carleton): M. McCleave s'est opposé à la limite de 17 ans et il a présenté au Comité les demandes de M. Passmore et du commissaire Nicholson. Dans sa lettre le commissaire Nicholson, mentionne que l'âge du permis de conduire est de 16 ans. Nous ne pouvons pas discuter de la philosophie de la question, mais nous sommes prêts à faire une concession, qu'est-ce que le Comité penserait de 16 ans.

Le président: Monsieur Ouellet?

M. Ouellet: Je crois qu'on dit que l'âge de 17 ans serait en conflit avec l'attribution de permis provinciaux. Quel est l'âge limite des permis provinciaux? Est-ce 16 ans ou moins de 16 ans?

M. Turner (Ottawa-Carleton): Cela varie d'une province à une autre, mais en général, c'est 16 ans. En d'autres termes, nous sommes prêts, à considérer ceci pour tous les articles où l'âge de 17 ans est indiqué, et à le remplacer par 16 ans.

Le président: Monsieur Murphy?

M. Murphy: C'est ce que j'allais vous demander, précisément, il en est question au paragraphe 7 de l'article 97, à la page 13.

M. Turner (Ottawa-Carleton): Oui, il en est question là. Je peux vous lire l'amendement que j'en suis sûr M. McCleave, ou un autre en son nom, voudra proposer.

M. Murphy: Pendant que nous y sommes, nous pourrions peut-être faire le paragraphe 7 de l'article 97?

Le président: Je pense, M. Murphy, que nous devrions d'abord en terminer avec l'article 87.

M. Chappell: Monsieur le président, puis-je dire quelque chose à propos de l'Article 87?

Le président: M. Chappell.

[Text]

Mr. Chappell: I do not think it is a fair comparison to take a driver, because a driver at 16 is observed by all others. If he is doing something wrong it is quite obvious that somebody will notify the authorities, so he is under surveillance all the time. However, a young man with a gun is not under surveillance. We are non urban society; 75 per cent of us live in built-up areas and if somebody gets out with a gun he can be dangerous. Although I do not think the age difference means a great deal, I would be quite happy to see it remain at 17.

Mr. Woolliams: Mr. Chairman, to bring this to a head—and as Mr. McCleave is unfortunately absent because of other important matters that are going on on the Hill—I would like to move that Bill C-150 be amended by striking out line 9 on page 8 and substituting “the age of *sixteen years who is not*”. In moving this amendment I would like to say that in Alberta we drive automobiles at 14 years of age but, of course, we have always claimed out there in the foothills that we are more intelligent than the rest of the Canadians.

Mr. Turner: You do not have as many things to run into out there.

The Chairman: All in favour of the amendment? Motion agreed to on division.

Clause 6, proposed Section 87, agreed to.

The Chairman: The next clause which was stood was Clause 95. Before we deal with that clause...

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Mr. Hogarth: I would like to refer back to Clause 91. I asked that this clause stand and then I suggested that I would be making an amendment to insert a section that immediately followed. Would you like to hear that discussed now or do you prefer that we go through all the sections that we have stood and then come back to any new sections that we might wish to insert?

The Chairman: I would like to complete the sections that were stood.

Mr. Hogarth: That is fine.

The Chairman: Clause 6, Proposed section 95 on page 10.

Mr. Hogarth: Mr. Chairman, on a point of order, I understood that there were two or three amendments here that were accepted by the Minister and I assumed that they were made. The clauses were not stood because they were considered amended.

[Interpretation]

M. Chappell: Je ne pense pas que la comparaison soit juste. Vous prenez, comme exemple, l'âge de 16 ans pour conduire un véhicule, mais le conducteur est sous la surveillance des autres. S'il fait quelque chose de mal, il a toutes les chances d'avoir à faire aux autorités. Par contre une personne armée est sans surveillance. 75 pour cent d'entre nous vivons dans des régions urbaines et si quelqu'un a une arme à feu entre les mains, il peut être très dangereux. Je ne pense pas que la différence d'âge soit vraiment significative, mais j'aimerais mieux garder le chiffre de 17.

M. Woolliams: Comme M. McCleave est malheureusement absent retenu par d'autres problèmes sur la Colline, d'autres questions très importantes, j'aimerais donc proposer que le Bill C-150 soit modifié en rayant la ligne 11 à la page 8, et y substituant «une personne de moins de seize». En proposant cet amendement, j'aimerais ajouter qu'en Alberta, nous conduisons les automobiles à quatorze ans. Bien entendu, nous prétendons toujours que nous sommes beaucoup plus intelligents dans les Prairies que dans les autres régions du Canada.

M. Turner (Ottawa-Carleton): Vous n'avez pas tant de choses à écraser dans vos prairies.

Le président: Tous en faveur de l'amendement?

L'amendement est adopté à la majorité. Article 6 du Bill relatif à l'article 87 du Code. Adopté.

Le président: L'article suivant qui avait été déferé, c'est l'article 95. Avant d'en venir à cet article...

M. Hogarth: Je voudrais revenir à l'article 91. J'avais demandé qu'on réserve cet article puis j'avais laissé entendre que je proposerais un amendement. Voudriez-vous qu'on attaque ce point immédiatement ou préférez-vous revenir à tous ces articles qui ont été réservés quitte à soumettre, ensuite, les nouveaux articles que nous désirons ajouter?

Le président: Je préférerais que nous étudions d'abord ces articles qui ont été réservés.

M. Hogarth: Très bien.

Le président: L'article 6 du bill: l'article 95 suggéré, à la page 10.

M. Hogarth: Monsieur le président, j'en appelle au Règlement. Je croyais que deux ou trois amendements avaient été acceptés par le ministre et que le texte avait été modifié en conséquence. Les articles n'avaient pas été réservés puisqu'ils avaient été amendés.

[Texte]

Mr. Turner (Ottawa-Carleton): Some of them are going to be accepted, Mr. Hogarth. We had second thoughts on this particular one and I want to tell you why.

Mr. Hogarth: That is fine. Go ahead.

Mr. Turner (Ottawa-Carleton): We are discussing the proposed new section 95 (1) at the bottom of page 10, an order prohibiting possession of firearm or ammunition.

Mr. Hogarth's suggestion, as I understand it, was that this section prohibiting possession of a weapon be extended to permit the making of such a prohibitory order where an order is made under Section 717 of the Code as it is now found. I had better read that sub-section (1) of Section 717.

(1) Any person who fears that another person will cause personal injury to him or his wife or child or will damage his property may lay an information before a justice.

Then the justice in sub-section (3) if he is

... satisfied by the evidence adduced that the informant has reasonable grounds for his fears...

orders

(a) ... that the defendant enter into a recognizance, with or without sureties, to keep the peace and be of good behaviour for any period that does not exceed twelve months...

Mr. Woolliams: What section is that, sir?

Mr. Turner (Ottawa-Carleton): Section 717, sub-section (3), paragraph (a). In other words, what Mr. Hogarth is suggesting is that we extend the prohibition order against possession of firearms under clause 6, proposed section 95 (1), which applies where a man has been convicted of a firearm offence, the judge can issue a prohibition order against his possessing any firearms in the future. Mr. Hogarth suggests that that prohibition order be extended to situation where you are bound over to keep the peace under Section 717.

On first blush we thought it had a lot of attraction but I want to put this to the Committee and have your views. We suggest that the amendment process be beyond the scope of the Bill as it stands. The principle of the proposed Section 95 here is to treat conviction as a condition precedent to the prohibition order. Where a man has been convicted of a firearms offence there shall be a prohibition order against him.

Section 717 does not involve any conviction. It is just if the justice is satisfied by the evidence adduced

[Interprétation]

M. Turner (Ottawa-Carleton): Certains seront acceptés. Nous avons repensé à celui-ci et j'aimerais vous dire pourquoi.

M. Hogarth: Très bien, allez-y.

M. Turner (Ottawa-Carleton): Il est question, ici du paragraphe (1) du nouvel article 95, qui apparaît au bas de la page 10 et qui traite d'une ordonnance prohibant la possession d'une arme à feu ou de munitions.

Monsieur Hogarth désire par son amendement, si je comprends bien, que cet article soit modifié de telle sorte qu'il permette l'émission d'une telle ordonnance dans les cas prévus à l'actuel article 717 du Code. Je crois qu'il serait préférable que je lise le paragraphe (1) de cet article 717.

(1) Quiconque craint qu'une autre personne ne cause des lésions corporelles à lui-même, à son épouse ou à son enfant, ou n'endommage sa propriété, peut déposer une dénonciation devant un juge de paix.

Si, en vertu du paragraphe (3) le juge de paix

(3) ... est convaincu, par la preuve apportée, que les craintes du dénonciateur sont raisonnablement fondées,

il ordonne

a) ... que le défendeur contracte un engagement, avec ou sans cautions, de ne pas troubler l'ordre public et d'observer une bonne conduite, pendant toute période d'au plus douze mois;

M. Woolliams: De quel article s'agit-il?

M. Turner (Ottawa-Carleton): Il s'agit de l'alinéa a) du paragraphe (3) de l'article 717. Ce que monsieur Hogarth propose c'est que cet interdit de possession d'arme à feu qu'un juge peut prononcer contre une personne trouvée coupable d'une infraction reliée au maniement des armes à feu soit également valide dans ces cas où une personne est tenue de garder la paix en vertu de l'article 717 du Code.

Cette proposition semblait attrayant à première vue mais permettez-moi une observation après quoi vous pourrez présenter votre propre point de vue.

Nous sommes d'avis que l'amendement dépasse la portée du Bill. L'article 95, dont nous sommes saisis, exige qu'il y ait eu condamnation avant qu'il y ait ordonnance prohibant la possession d'arme à feu. Si un homme a été condamné il y aura interdiction.

L'article 717 ne parle pas de condamnation préalable, Si le juge de paix est convaincu par la preuve

[Text]

that the informant has reasonable grounds for his fears, who fears that another person will cause personal injury to him or his wife—no charge but just anticipated fear, or fear of an anticipated act, not involving any conviction but just saying, "Look, there have been threats made here and your conduct has been such that we think the informant is justified in asking me to bind you over under surety or without surety to keep the peace." No conviction. Our view, our feeling is that perhaps we would be better in the meantime to let any seizure affecting the safety of people not be taken under 717 as suggested by Mr. Hogarth, but relying instead on the provisions of Clause 6, proposed new Section 98G of this Bill at page 20, where a Crown prosecutor or a Crown attorney or any agent of the Attorney General can, by going before a judge, get an order to seize any weapons where:

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... in the interests of the safety of that person or of other persons ...

In other words we already have a safety control provision relating to firearms in proposed Section 98G. We believe at the moment that this is the better way to do it. In future amendments to the Code we will consider the desirability of amending Section 717 to enable some such prohibitory order but carrying a much less severe maximum penalty.

You will notice that a breach of proposed Section 95 carries a maximum penalty of five years and that a breach of Section 717 carries a maximum penalty of six months, summary.

One relates to conviction; therefore you have a heavy maximum penalty. One relates to being bound over to keep the peace, without conviction, with no charge having been proved, just suspicion and evidence having been sufficient to satisfy the justice. So even a breach of Section 717 is merely a summary conviction offence under 718. We feel that we would like to look into this a little more carefully because to attach a prohibition order that relates to firearms to Section 717 is to attach a far more extreme penalty than we think 717 deserves.

The Chairman: Mr. Murphy.

Mr. Murphy: Is not the penalty provision of proposed new section 95, sub-section (1) a penalty which would prohibit the person involved from holding a weapon or firearms up to a maximum of five years? In other words the magistrate could impose a time period identical to the time period provided for in Section 717, could he not? It would also appear to be a discretionary measure with the magistrate, would it not?

Mr. Turner (Ottawa-Carleton): Discretionary with the magistrate, yes.

[Interpretation]

apportée que le dénonciateur a raison d'avoir peur, peur qu'on cause des lésions corporelles à lui-même ou à sa femme, il peut déclarer à la personne visée par la dénonciation: «Des menaces ont été proférées et votre conduite est telle que nous croyons que le dénonciateur a raison de demander que vous soyez tenu de garder la paix». Il n'est nullement question de condamnation.

Nous croyons qu'il serait préférable que ces saisies, qui touchent la liberté individuelle, ne puissent survenir en vertu de l'article 717 comme le suggère monsieur Hogarth mais que nous nous appuyions plutôt sur le nouvel article 98G que l'on retrouve à la page 20 de ce bill. En vertu de cet article, le procureur de la Couronne ou tout représentant du procureur général peut demander à un juge d'émettre une ordonnance en vue de la saisie de toute arme à feu lorsqu'il y a de

... la sécurité de cette personne ou d'autres personnes ...

Cette protection, au sujet des armes à feu, existe déjà grâce au nouvel article 98G. Il nous semble que c'est la meilleure façon de procéder pour le moment. Plus tard, nous songerons à l'opportunité de modifier l'article 717, pour permettre l'émission d'une telle ordonnance qui, toutefois, entraînerait une peine moins sévère.

Vous noterez que toute violation du nouvel article 95 comporte une peine maximum de cinq ans alors qu'une violation de l'article 717 comporte une peine maximum de douze mois.

Dans un cas, il s'agit de condamnation en bonne et due forme, par conséquent, la sentence maximum est plus lourde, tandis que dans l'autre il n'y a pas de condamnation, pas d'accusation et de preuves formelles, uniquement des doutes et une preuve suffisante pour convaincre le juge de paix. Donc, même une violation de l'article 717 est punissable sur déclaration sommaire de culpabilité en vertu de l'article 718. Nous désirons y regarder d'un peu plus près parce qu'il nous semble qu'émettre une ordonnance dans les cas prévus par l'article 717 est une peine inutilement lourde.

Le président: Monsieur Murphy.

M. Murphy: Est-ce que la peine attachée au nouvel article 95, tel qu'indiqué au paragraphe (1), n'en est pas une par laquelle le juge peut interdire à une personne de détenir une arme à feu jusqu'à un maximum de cinq ans? Le magistrat ne pourrait-il pas imposer une peine identique à celle que prévoit l'article 717? Le tout est laissé à la discrétion du magistrat, n'est-ce pas?

M. Turner (Ottawa-Carleton): Oui.

[Texte]

Mr. Hogarth: A breach of an order under Clause 6, proposed Section 95 is also a summary conviction offence.

Mr. Turner (Ottawa-Carleton): It is optional but what you are really doing is converting 717 from a summary offence into an optional indictable offence by use of a prohibition order. With no previous conviction it seems a little rough.

The Chairman: Mr. Hogarth.

Mr. Hogarth: Mr. Chairman, I take Clause 6, proposed Section 95 to mean by the words in the second line

... involving the use ... of any firearm

that that would apply to all the assaults, wounding, attempt murder, any of these offences which involve the use of firearms.

Mr. Turner (Ottawa-Carleton): That is right.

Mr. Hogarth: It appears to me that where, under the provisions of Section 717—and there can be extremely serious situations arising under this section—a wife has been threatened by her husband, principally, but it has not constituted an assault—where that is involved, the threat of the use of a firearm ...

Mr. Turner (Ottawa-Carleton): But if the husband is threatening her with a firearm you have all sorts of sections under the Code.

Mr. Hogarth: Just one moment. He might well not touch the firearm. He might just say, "I am going to shoot you". These things, Mr. Minister, are happening every day in the police courts. It appears to me where the threat involves the use of a firearm that surely in addition to the provisions of 717 the magistrate should be able to make the order under Section 95 and I cannot see the argument that you can turn to Section 98G because in order to get the order that the magistrate should be able to make in the first place, you have to get the consent of the Attorney General and go to a superior court judge. Certainly this is the prevention of crime and everything we can do to prevent the shooting of people I think should be carried out in this Act. Certainly this is one thing that might be extremely effective.

The Chairman: Shall Clause 6, proposed Section 95(1) carry? Mr. Gilbert.

Mr. Gilbert: Mr. Minister, are you saying that in Section 717 the magistrate has no power to prohibit a weapon?

Mr. Turner (Ottawa-Carleton): Oh, sure.

[Interprétation]

M. Hogarth: Faire fi d'une ordonnance émise en vertu de ce nouvel article 95 est une infraction punissable sur déclaration sommaire de culpabilité, n'est-ce pas?

M. Turner (Ottawa-Carleton): C'est facultatif. En fait, ce qui se produit, c'est que l'infraction, punissable sur déclaration sommaire de culpabilité en vertu de l'article 717, peut devenir un acte criminel en utilisant une ordonnance. Ce qui me semble un peu fort.

Le président: Monsieur Hogarth:

M. Hogarth: Lorsqu'on dit, dans le nouvel article 95,

(1) ... comportant l'utilisation ... d'une arme à feu ...

Je suppose que l'on parle de tout genre d'assauts, qu'il s'agisse de voies de fait, de tentative de meurtre, lorsqu'il y a usage d'armes à feu.

M. Turner (Ottawa-Carleton): C'est juste.

M. Hogarth: Il me semble, en vertu de l'article 717, que si un mari menace sa femme, mais qu'il n'y a pas d'assaut, qu'il menace d'utiliser une arme à feu ...

M. Turner (Ottawa-Carleton): Si le mari menace sa femme à l'aide d'une arme à feu, plusieurs articles du Code peuvent s'appliquer.

M. Hogarth: Il se peut fort bien que le mari ne touche pas l'arme à feu, qu'il dise simplement à sa femme: «Je vais te tirer». De tels cas surviennent tous les jours. Il me semble que, s'il y a menace et utilisation, en même temps, d'une arme à feu, en plus de l'article 717, le magistrat peut recourir à l'article 95 et émettre une ordonnance. Je ne vois pas comment vous pourriez recourir à l'article 98G parce que pour obtenir l'ordonnance que le magistrat devrait pouvoir émettre lui-même, il faut le consentement du procureur général et la présentation de la demande à un juge de la cour supérieure. Ce que nous voulons c'est éliminer le crime et il me semble que tout ce que nous pouvons faire pour empêcher les gens de s'entretuer nous devrions le faire en vertu de ce bill. Il me semble que cette mesure serait fort utile.

Le président: L'article 95, paragraphe 1, est-il adopté? Monsieur Gilbert.

M. Gilbert: Dites-vous, monsieur le ministre, qu'en vertu de l'article 717, le magistrat n'a pas le pouvoir d'interdire l'utilisation ou le port d'une arme à feu?

M. Turner (Ottawa-Carleton): Peut-être que ...

[Text]

Mr. Gilbert: Surely he can make it a term of the recognizance, can he not?

Mr. Turner (Ottawa-Carleton): It is questionable but he might well have the discretion under the surety bond and when he orders the defendant to keep the peace and be of good behaviour.

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Mr. Gilbert: Is that not the power that he should exercise? I am rather dubious about your reference in proposed Section 98G, that the Crown will go to a Superior Court judge and ask for an order. Surely the strength of this provision should be giving the magistrate the power to make it a term of recognizance rather than . . .

Mr. Turner (Ottawa-Carleton): We said we would look into 717 again but in a future Minute. We feel that to use the force of proposed Section 95(1) which relates to previous convictions, is a little rough when transferring to 717.

Mr. Gilbert: I think your point is a good one.

Mr. Turner (Ottawa-Carleton): Yes.

Clause 6, proposed Sections 95(1) and (2) agreed to.

On Clause 6, proposed Section 97(2) (a)—*Limitation*.

Mr. Woolliams: Did 97 (2) carry?

The Chairman: No, we are on 97(2)(a) on page 12. Could the Minister give an explanation, please.

Mr. Turner (Ottawa-Carleton): Wait a minute. While we were on Section 95 Mr. Woolliams brought up the question of ammunition. I wondered if you wanted to deal with ammunition while on Section 95, because I think that was when Mr. Woolliams pointed it out.

The Chairman: Would it be in order to have an explanation on Section 95?

Some hon Members: Agreed.

Mr. Turner (Ottawa-Carleton): Section 95(2) reads:

(2) Every one who carries or has in his possession any firearm or ammunition . . .

Mr. McQuaid asked me if ammunition was not defined in the Code and how did we define it. The answer we gave then I think is the answer we can still give. "Ammunition" is defined in all the dictionaries as relating to firearms. It is the view of the

[Interpretation]

M. Gilbert: Est-ce que cette interdiction ne pourrait pas être incluse dans l'engagement que le défendeur contracte?

M. Turner (Ottawa-Carleton): Ce n'est pas certain. Mais il pourrait avoir ce pouvoir lorsqu'il ordonne au défendeur de garder la paix.

M. Gilbert: N'est-ce pas le pouvoir qu'il devrait exercer? J'ai quelques doutes au sujet de l'explication que vous donnez de l'article 98G à savoir que la Couronne s'adressera à un juge de la Cour supérieure et demandera une ordonnance. Sûrement le libellé de cette disposition devrait être tel que le magistrat puisse inclure cela dans la caution personnelle plutôt que . . .

M. Turner (Ottawa-Carleton): Nous avons dit que nous examinerions 717 de nouveau, mais un peu plus tard. Nous estimons que si l'on utilise les sanctions prévues par l'article 95 (1) qui se rattache à une condamnation antérieure, cela alourdit sûrement la sentence lorsqu'on change à 717.

M. Gilbert: Votre raisonnement est bon.

M. Turner (Ottawa-Carleton): Oui.

La clause 6, les articles proposés 95(1) et (2) sont adoptés.

Sur la clause 6, l'article 97(2) a)—*Restriction*

M. Woolliams: L'article 97(2) a-t-il été adopté?

Le président: Non, nous étudions 97(2)(a) à la page 12. Le ministre peut-il nous donner une explication s'il vous plaît?

M. Turner (Ottawa-Carleton): Attendez une minute. Lorsque nous avons étudié l'article 95, monsieur Woolliams a soulevé la question des munitions. J'ignore si vous voulez revenir là-dessus alors que nous en sommes à l'article 95.

Le président: Serait-il dans l'ordre d'avoir une explication sur l'article 95?

Des voix: D'accord.

M. Turner (Ottawa-Carleton): L'article 95 (2) dit:

(2) . . . quiconque porte ou a en sa possession une arme à feu ou des munitions . . .

M. McQuaid m'a demandé si les munitions n'étaient pas définies dans le Code et de quelle façon nous les définissions. La réponse que nous lui avons alors donnée est encore la réponse que nous pouvons donner. Définies dans tous les dictionnaires et d'après

[Texte]

law officers that neither a layman nor the courts are going to have any problem understanding what is meant by ammunition in the context in which it is found throughout the Criminal Code.

I might just read some of the dictionary definitions:

1. *Blackie's Concise English Dictionary: New Edition*

"Military stores, especially such articles as are used in the discharge of firearms and ordnance of all kinds, as powder, shells, etc."

2. *Webster's Third New International Dictionary - 1964*

"1. obs. general military supplies.

2. a. the various projectiles together with their fuzes, propelling charges, and primers that are fired from guns

b. explosive military items (as grenades, bombs and pyrotechnical material)

c. any item or material that is thrown in flight or play (as spears or snowballs)

3. resources for attack or defence often in a contention or struggle in which one must engage."

3. *Funk and Wagnalls New Practical Standard Dictionary*

"Any one of various articles used in the discharge of firearms and ordnance, as cartridges, shells, shot, rockets, etc.; figuratively, any resources for attack or defense.—*Drill Ammunition* Small arms and artillery ammunition without an explosive charge—*Fixed Ammunition* Ammunition loaded into the gun as a unit, rather than in parts.

4. *A new English Dictionary Vol I-A & B-Oxford*

"...

1. Military stores or supplies; formerly, of all kinds (as still attrib.: see 3); now, articles used in charging guns and ordnance, as powder, shot, shell; and by extension, offensive missiles generally."

5. *The Shorter Oxford English Dictionary-3rd ed.*

"1. Military stores or supplies; orig. of all kinds; now, powder, shot, shell; and, in extension, offensive missiles generally."

We think that it relates close enough to the discharge of firearms in these definitions that the courts would have no trouble relating the ammunition to the definition of firearms.

[Interprétation]

les conseillers juridiques, ni les profanes ni les tribunaux n'auront de difficulté à comprendre ce qu'on veut dire par «munitions» dans le contexte présent du Code criminel.

Je puis lire certaines des définitions de dictionnaires si vous le voulez:

1. *Blackie's Concise English Dictionary: New Edition*

"Military stores, especially such articles as are used in the discharge of firearms and ordnance of all kinds, as powder, shells, etc."

2. *Webster's Third New International Dictionary-1964*

"1. obs. general military supplies.

2. a. the various projectiles together with their fuzes, propelling charges, and primers that are fired from guns

b. explosive military items (as grenades, bombs and pyrotechnical material)

c. any item or material that is thrown in flight or play (as spears or snowballs)

3. resources for attack or defence often in a contention or struggle in which one must engage."

3. *Funk and Wagnalls New Practical Standard Dictionary*

"Any one of various articles used in the discharge of firearms and ordnance, as cartridges, shells, shot, rockets, etc.; figuratively, any resources for attack or defense.—*Drill Ammunition* Small arms and artillery ammunition without an explosive charge—*Fixed Ammunition* Ammunition loaded into the gun as a unit, rather than in parts.

4. *A New English Dictionary Vol I-A & B-Oxford*

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5. *The Shorter Oxford English Dictionary-3rd ed.*

"1. Military stores or supplies; orig. of all kinds; now, powder, shot, shell; and, in extension, offensive missiles generally."

Nous croyons que cela se rattache fort bien au déclenchement d'armes à feu et on a aucune difficulté à rattacher la définition des munitions à celle des armes à feu.

[Text]

Mr. McQuaid: Mr. Chairman, this is my very point. The definitions are so broad and include so many things that I think you are putting the court in an almost impossible position to ask them to define "ammunition" from what you have read from these dictionaries. Since you are making this an indictable offence I suggest that it is not something to play

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around with. A man who has in his possession ammunition is now liable to indictment. I think some effort should be made to clarify what you mean by ammunition.

Is throwing a snowball an indictable offence from now on? Snowballs are classified as ammunition in one of the dictionaries.

Mr. Turner (Ottawa-Carleton): We think that ammunition will be looked after by the courts in the context of the firearms used. I think the Criminal Code has always adopted the principle, Mr. McQuaid, that words having generally accepted meanings should not be further defined unless necessary, otherwise the process would never stop. At any rate, in our view "ammunition" is sufficiently well defined for the purposes of the Code.

The Chairman: Mr. Woolliams.

Mr. Woolliams: I think the first thing you have to do when you are amending the Code—sometimes we all lose track of it and lawyers are worse than other people in this regard—is to ask ourselves what we are trying to do. It would seem to me that what the Minister is really trying to do is stop those people who are carrying boxes of ammunition with machine or other guns to rob banks. I think that is what you are really after. I think what Mr. McQuaid wants, and there is some merit in it, is not to define ammunition but to limit the kind of ammunition to certain conditions and certain weapons. Surely it should be limited to firearms, and I think that is what we are trying to do.

The Chairman: Thank you, Mr. Woolliams.

Mr. Woolliams: I would like to hear from the Minister. Is that not what you are really after, and is that not the purpose of this amendment?

Mr. Turner (Ottawa-Carleton): We agree that that is what we are after and we believe, Mr. Woolliams, and I think you put it very well, that the context bears that out. If every time you see the word "ammunition" it is in the context of "a firearm or ammunition" we feel that that is sufficiently precise to cover Mr. McQuaid's point.

The Chairman: Now we are back again to Section 97 (2) (a).

[Interpretation]

M. McQuaid: Monsieur le président, c'est le point que je soulève. Les définitions sont tellement vastes et comprennent tellement de choses que cela mettrait les tribunaux dans une situation à peu près impossible si on leur demandait de définir les munitions d'après ce que vous avez lu, d'après tous ces dictionnaires. Comme il s'agit là d'un délit passible de sanction, il me

semble que quelqu'un qui a en sa possession des munitions est maintenant passible d'une peine, il conviendrait d'essayer d'expliciter la définition de munitions.

Est-ce que le fait de lancer une boule de neige sera maintenant un délit passible de sanction?

Des boules de neige peuvent être une munition d'après l'un des dictionnaires.

M. Turner (Ottawa-Carleton): Nous estimons que le terme munition sera considéré par les tribunaux dans le contexte des armes à feu utilisées. Le Code criminel a toujours adopté le principe suivant lequel des mots qui ont une signification généralement acceptée ne devraient pas être circonscrits davantage à moins que cela soit nécessaire. Autrement, nous tomberions dans un cercle endémique et nous sommes d'avis que cela est suffisamment défini aux fins du Code.

Le président: Monsieur Woolliams.

M. Woolliams: La première chose qu'il faut faire en modifiant le Code, et nous l'oublions quelquefois, et les avocats sont pires que les autres à cet égard, c'est de vous demander ce que nous essayons de faire. Ce que le ministre essaie de faire en somme, c'est d'essayer d'arrêter les gens qui transportent des boîtes de munitions avec des mitraillettes pour voler des banques. Voilà précisément ce qu'il veut faire. Je crois que la proposition de M. McQuaid est valide et il ne s'agirait pas tellement de définir les munitions mais de limiter l'usage des munitions pour certaines zones, mais seulement cela devra être limité dans le cas des armes à feu. Et je crois que c'est ce que vous essayez de faire.

Le président: Merci monsieur Woolliams.

M. Woolliams: J'aimerais que le ministre nous donne son opinion là-dessus, n'est-ce pas précisément le but de cet amendement?

M. Turner (Ottawa-Carleton): Nous estimons, monsieur Woolliams, et je crois que vous l'avez bien exposé et le contexte le montre bien. Chaque fois que vous voyez le terme «munitions», c'est arme à feu ou munitions, il me semble que le contexte est suffisamment précis pour tenir compte de l'objection de M. McQuaid.

Le président: Nous en sommes maintenant à l'article 97 (2) a).

[Texte]

Mr. Hogarth: There is an amendment to be made here, Mr. Chairman, and I spoke about it on the last occasion. The words in proposed Section 97 (2) (a) which now read "to protect his life or property" should read "to protect life or property".

Mr. Turner (Ottawa-Carleton): We slept on that, we still agree, and you have a copy of your amendment, Mr. Hogarth.

Mr. MacGuigan: Mr. Chairman, was that amendment not carried? I understood that that section was carried with that amendment.

Mr. Hogarth: Here is the formal amendment, in any event.

The Chairman: Just a moment please. This clause was apparently stood, Mr. MacGuigan.

Mr. MacGuigan: I do not believe so. I think it was carried as amended.

The Chairman: It was stood.

Mr. Turner (Ottawa-Carleton): As I recall, it was stood over because of the French translation. They wanted to make sure of it.

Mr. MacGuigan: My apologies.

Mr. Hogarth: I move that Bill C-150 be amended

(a) by striking out line 29 on page 12 and substituting the following:

(a) to protect life or property,

Mr. Blair: Mr. Chairman, could I ask how the French text will read?

Mr. Turner (Ottawa-Carleton): «pour protéger la vie ou les biens.»

Amendment agreed to.

On Clause 6, Proposed Section 97(5)—Permit to person under 14 years of age.

Mr. Hogarth: I would like to move an amendment to this to provide that the words "for good" be deleted from the last line of that subsection on page 13, half way down.

Mr. Turner (Ottawa-Carleton): Could I speak to that? We have looked into the question relayed through Mr. Hogarth by Mr. Paul St-Pierre and we would be willing to contemplate an amendment striking out line 26 on page 13 which now reads, "person to hunt game for food" and substituting the following, "person to hunt game for good or family support", which would cover the point raised by Mr. Hogarth.

[Interprétation]

M. Hogarth: Il a un amendement à faire ici monsieur le président. J'ai fait des commentaires là-dessus lors de la dernière séance, il s'agit de l'article proposé 97 (2) a) qui dit: «pour protéger sa vie ou ses biens . . .»

M. Turner (Ottawa-Carleton): Nous y avons songé et nous sommes d'accord; vous avez un exemplaire de votre amendement, monsieur Hogarth.

M. MacGuigan: Monsieur le président, cet amendement a-t-il été adopté? J'avais compris que cet article avait été adopté avec cet amendement.

M. Hogarth: En tout cas, voici l'amendement réglementaire.

Le président: Un moment, s'il vous plaît. Apparemment, l'article a été réservé, monsieur MacGuigan.

M. MacGuigan: Je ne le crois pas. Je crois qu'il a été adopté avec l'amendement.

Le président: Il a été réservé.

M. Turner (Ottawa-Carleton): Si je me souviens bien, il a été réservé à cause de la traduction française. Ils voulaient en être sûrs.

M. MacGuigan: Mes excuses.

M. Hogarth: Je propose que le bill C-150 soit modifié en éliminant la ligne 29 à la page 12 et en lui substituant ce qui suit:

a) pour protéger la vie ou les biens.

M. Blair: Puis-je demander quelle sera alors la version française?

Mr. Turner (Ottawa-Carleton): "to protect life or property."

L'amendement est adopté.

Sur la clause 6, l'article proposé 97 (5)—Permis pour une personne de moins de 14 ans.

M. Hogarth: J'aimerais proposer un amendement pour que les mots «pour sa nourriture» soient éliminés de la dernière ligne de ce paragraphe à la page 13, vers le milieu.

M. Turner (Ottawa-Carleton): Nous avons étudié cette question qui a été soulevée par M. Paul St-Pierre par l'entremise de M. Hogarth et nous sommes prêts à accepter une modification qui éliminerait la ligne 26 à la page 13, qui présentement se lit ainsi: «personne de chasser du gibier pour sa nourriture» et d'y substituer ce qui suit: «personne de chasser du gibier pour sa nourriture ou pour la subsistance de sa famille», ce qui couvrirait le point soulevé par M. Hogarth.

[Text]

Mr. Woolliams: And it looks after the squirrels.

Mr. Turner (Ottawa-Carleton): Yes, and it looks after the squirrels. It is either the squirrel amendment or the Hogarth amendment.

Mr. Hogarth: It is nice to have a choice, coming from you.

An hon. Member: Could you read it in French?

Clause 6, proposed Section 97(5), as amended, agreed to.

On Clause 6, proposed Section 97(7)—Other Permits.

Mr. Woolliams: I will now move the same amendment to proposed section 97(7) to change the age from seventeen to sixteen. Mr. Chairman, will you read it into the record? You have a copy.

The Chairman: It is move by Mr. Woolliams that Bill C-150 be amended by striking out line 38 on page 13 and substituting the following: "under the age of sixteen years to".

Mr. Murphy: Mr. Chairman, I have just one question to the Minister in connection with this section. As I remember, the letter Mr. McQuaid read at the last meeting had two points. One was changing the age, and the other one was showing some concern about the fact that permits might be issued to persons between the ages of 14 and 16 without any type of testing or anything taking place to ascertain whether a person of that age should be allowed to carry a firearm or be licensed. Has the Minister any comment to make in that connection?

Mr. Turner (Ottawa-Carleton): Yes, we feel that the testing provisions are properly provincial. More and more provinces are now requiring testing provisions prior to issuing a hunting licence. We feel that the local registrar, before issuing a permit to a minor between 14 and 16, would certainly take into consideration, whether or not he had passed the test in those provinces in which tests are now mandatory for the hunting licence, and we had hoped this would be so.

I might say this, too. We hope that all the provinces move towards testing young people before allowing permits for hunting. We believe that this must come, and we feel we have properly left this to provincial jurisdiction.

Clause 6, proposed Section 97(7), as amended, agreed to.

On Clause 6, proposed Section 98A (5)—Notice to be given.

Mr. Woolliams: I would like to ask a question here. I do not know what section it is—I have forgotten. I

[Interpretation]

M. Woolliams: Et ça prend soin des écureuils.

M. Turner (Ottawa-Carleton): Oui, et ça prend soin des écureuils. Ou c'est l'amendement des écureuils ou l'amendement Hogarth.

M. Hogarth: C'est très bon de votre part de nous donner un choix.

Une voix: Pourriez-vous le lire en français?

Clause 6, l'article proposé 97(5) ainsi modifié est adopté. L'article 97, paragraphe (7). *Autres permis.*

M. Woolliams: Je voudrais maintenant proposer un amendement, un amendement pour changer l'âge de 17 à 16 ans. On lirait «moins de 16 ans» au lieu de «moins de 17 ans».

Le président: Il est proposé par M. Woolliams que le Bill C-150 soit modifié en éliminant la ligne 42 à la page 13. On remplacerait notamment «de moins de 17 ans» par «de moins de 16 ans».

M. Murphy: J'aimerais poser une question au ministre sur ce sujet. Si j'ai bien compris la lettre que M. McQuaid a lue lors de la dernière réunion, il y avait deux points essentiels: d'abord le changement de l'âge, en réduction de 17 à 16 ans, et le deuxième point, c'est qu'on s'inquiétait du fait que les permis pourraient être émis à des adolescents de 14 à 16 ans sans aucun genre d'essai ou de test pour déterminer si un adolescent de cet âge devrait avoir l'autorisation de porter une arme à feu avec permis. Le ministre a-t-il des commentaires à faire là-dessus?

M. Turner (Ottawa-Carleton): Nous estimons que la disposition de vérification incombe aux autorités provinciales. De plus en plus de provinces demandent une vérification ou un examen pour le permis d'arme à feu en vue de la chasse. Sans doute, un mineur, un adolescent, je dirais de 14 à 16 ans, devrait être assujéti à cette vérification. Cette vérification ou cet examen devrait être obligatoire pour le permis de chasse. Nous espérons que toutes les provinces vont appliquer cet examen imposé aux jeunes avant de leur accorder des permis de chasse.

A juste titre, je crois, nous avons laissé cette question entre les mains des autorités provinciales.

L'article 6 du Bill relatif à l'article 97 (7) du Code, ainsi amendé, est adopté.

L'article 98A(5), à la page 16. *Avis à donner.*

M. Woolliams: J'aimerais poser une question. J'ignore de quel paragraphe exactement il s'agit. J'ai

[Texte]

was impressed with the argument that was put forth by Mr. Hogarth, I think, in reference to confiscation. The weapons of minors are confiscated and they cannot be returned. Surely there should be some discretion put in as to the return. I do not know whether we are coming to that.

The Chairman: It is in Clause 6, proposed Section 98F.

Mr. Woolliams: Section 98F. I hope when we get to that we will have some affirmative decision in favour of the suggestion that they could be returned with discretion.

The Chairman: On Section 98A (5).

Mr. Turner: You will recall that certain members suggested that an appeal from any permit revocation case should go from the magistrate's decision to the county court instead of the court of appeal. Mr. Schumacher and Mr. Woolliams got into the discussion, and somebody over on my right. Or alternatively it should go to the county court and then to the court of appeal.

Our suggestion is that we leave the direct appeal to the court of appeal from the magistrate, because an appeal court decision on a point of law would be binding throughout the particular province. Also we feel that this direct appeal would be desirable to avoid the expense of an additional step in the appeal process that would be inflicted upon the private citizen if he were to be required to go from the permit issuer to the magistrate to the county court and to the court of appeal. Therefore, it is our suggestion that we will leave it as it is with a direct appeal from the magistrate to the court of appeal.

● 1055

Mr. Schumacher: Mr. Chairman, I do not think we should necessarily accept the Minister's explanation to the effect that it would be better for the subject to go directly to the court of appeal. I think that the procedure used in appeals under Section 720 of the Criminal Code is a very good provision for the average citizen of this country because it allows him to get away from the magistrates who in many cases are totally untrained in the law. In such a case he has to get away from the magistrate in order to get some justice, and I do not think it is going to help the citizen to require him to go to the court of appeal of the province, which is a very expensive procedure.

It is very cheap and expeditious for him to go to the county or district court. And if there is a body of law that is going to develop, there is the proce-

[Interprétation]

été impressionné par l'argumentation qu'on a présentée, c'était, je pense, M. Hogarth, au sujet de la confiscation. Dans le cas des mineurs, si des armes à feu étaient confisquées il devrait sûrement y avoir certains pouvoirs discrétionnaires accordés quant à la récupération ou la cession de cette arme. J'espère que cet argument fera pencher la balance en faveur de la proposition, à savoir que l'arme à feu pourrait être rendue au propriétaire moyennant un pouvoir discrétionnaire du juge.

Le président: C'est dans l'article 6 de la Loi de l'article 98, paragraphe F.

M. Woolliams: L'article 98, paragraphe F. J'espère que lorsque nous y serons nous aurons une décision affirmative aux fins que ces armes puissent être rendues à discrétion.

Le président: L'article 98A (5).

M. Turner (Ottawa-Carleton): Sans doute vous rappelez-vous que certains députés avaient proposé qu'un appel pour toute révocation de permis soit la décision du magistrat en cour de comté plutôt qu'en cour d'appel. M. Woolliams et quelqu'un qui siège à ma droite aussi, je crois, avaient soulevé cette question de la révocation du permis par la Cour de comté d'abord plutôt qu'en Cour d'appel.

Nous estimons pour notre part que nous devrions laisser l'appel direct en Cour d'appel car juridiquement, c'est la Cour d'appel, dans diverses provinces, qui est responsable de la décision. Ce genre d'appel serait nécessaire pour éviter une autre étape qui coûterait des frais plus élevés aux citoyens s'il fallait aller du magistrat de la Cour de comté à la Cour d'appel. Et nous estimons pour notre part que nous devrions laisser l'article tel quel, qu'il y ait appel directement de la cour de magistrat à la Cour d'appel, sans plus.

M. Schumacher: Monsieur le président, je ne pense pas que nous soyons obligés d'accepter les explications du ministre sans réserve. Peut-être serait-il mieux de s'adresser directement à la Cour d'appel. Je crois que la procédure utilisée dans les appels aux termes de l'article 720 du Code criminel serait une excellente disposition pour le citoyen moyen car cela lui permet de pouvoir délaissier la Cour de magistrat, dont les juges la plupart du temps n'ont pas de formation juridique. Dans de tels cas il faut nécessairement que le citoyen puisse se rendre à une autre Cour que la Cour de magistrat pour qu'on lui rende justice, et je ne pense pas que cela va aider les citoyens en obligeant les citoyens à se rendre à la Cour d'appel, ce qui représente une procédure coûteuse.

Il serait beaucoup plus simple de s'adresser à une Cour de comté ou de district. Et il y aurait alors un

[Text]

dure to get away from that court if somebody wants to establish the point, which will then be of general application throughout the province.

I would disagree with the Minister in his feeling in regard to this procedure, and I would still urge that consideration be given to allowing the citizens of this country to redress their grievances if it is in regard to this provision in the most expeditious and inexpensive manner possible.

The Chairman: Mr. Woolliams.

Mr. Woolliams: Speaking of costs, as we know we go to the court of appeal. The courts of appeal of the various provinces demand a factum to be filed. This is your argument on facts and law. They demand an appeal book, and the expense today, even if it is only a short appeal book—I do not know exactly what other provinces are charging, but if you can get away with \$1.00 per page you are very fortunate. And most courts of appeal now have laid down the rule that they like their factums almost printed. If they are not printed they are typed and xeroxed, so that you have to have everything pretty well perfect. And the cost of going to the appeal is very high.

I am going to have something to say a little later when we get to that section of the Code in reference to trial *de novo*, which is appeal from summary conviction where you have a more complicated notice of appeal, *et cetera*. Then you have to go to the court of appeal, but if that were streamlined, there is no doubt about it that the district court would be the least expensive.

It is only in very rare cases that a point of law goes from the district court where there is a trial *de novo* to the court of appeal. We are dealing with a discretion, and normally a discretion, unless it is not exercised in a legal manner, is not a question of law. So I cannot think of many questions of law actually going to the court of appeal. I think there is some merit in Mr. Schumacher's suggestion. I would like to see more thought given to it. I do not want to hold up the section in this regard because we are moving along expeditiously this morning and it suits me fine.

Mr. Turner: We do not hold any strong views. If you want to test the will of the Committee, we would be prepared to draft an amendment incorporating Mr. Schumacher's suggestion.

By the way, I misled the Committee. We are dealing with proposed Section 98A(5) and this was dealing with 98A(10). I apologize. If we get 98A(10) out of the way, we can go back to Section 98A(5).

Mr. Woolliams: My amendment can be put in its formal shape by somebody in your Department, and with the consent of the Committee, without putting it in writing, my amendment is that the appeal go to the county or district court.

[Interpretation]

recours d'appel. On pourrait établir un précédent qui deviendrait une cause-type pour l'ensemble de la province. Et je ne suis pas d'accord avec le ministre vis-à-vis de cette procédure. Je suis encore d'avis qu'on devrait songer à permettre aux citoyens canadiens de faire redresser leurs griefs de la façon la moins coûteuse et la plus diligente possible.

Le président: M. Woolliams.

M. Woolliams: Au sujet des frais, comme vous le savez, les Cours d'appel des diverses provinces exigeraient qu'on dépose un factum. Et si l'on tient compte des frais aujourd'hui pour une cause d'appel assez brève, j'ignore ce que les autres provinces demandent, cela peut coûter \$1.00 par page, dans le moins. La plupart des Cours d'appel veulent maintenant que tout soit imprimé, tout soit passé à la machine Xerox. Le coût d'un recours en appel est excessif. J'aurai quelque chose à dire un peu plus tard lorsque nous viendrons à cet article au sujet des reprises de procès; lorsqu'il y a un avis d'appel beaucoup plus compliqué, il ne fait pas de doute que la Cour de district sera la moins coûteuse.

Ce n'est que dans des cas très rares que l'on s'adresse à la Cour de district. Il s'agit ici d'un pouvoir discrétionnaire. Un pouvoir discrétionnaire exercé de façon légale n'est pas un point juridique en soi, et je peux penser à bon nombre de questions juridiques qui seraient adressées en Cour d'appel. J'aimerais pour ma part que l'on réfléchisse davantage à cette question. Je ne veux pas du tout retarder l'étude de cet article; nous procédons avec une certaine célérité ce matin, et cela fait bien mon affaire.

M. Turner (Ottawa-Carleton): Nous n'avons pas de convictions très fermes. Si vous voulez, et si telle est la volonté du Comité, nous pourrions peut-être préparer un projet d'amendement. J'ai induit le Comité en erreur, il s'agit de l'article 98A(5) et non pas de l'article 98A(10). Nous pourrions revenir à (5).

M. Woolliams: Quelqu'un de votre ministère pourrait peut-être présenter un amendement de façon formelle. Pour ma part, j'estime que l'appel devrait pouvoir être présenté en Cour de comté ou de district.

[Texte]

Mr. Turner: And then to the court of appeal?

Mr. Woolliams: On a question of law.

Mr. Schumacher: Like Section 720. Under the provisions of Section 720 of the Criminal Code that is the procedure.

Mr. Gilbert: Mr. Chairman, on a point of information, that would mean that the appeal to the county court would be a trial *de novo*.

The Chairman: Just to get back on the rails somewhat, we are dealing with Sections 98A (5) and (6).

Mr. Woolliams: As the Minister suggested, with the greatest respect, Mr. Chairman, now that we are on this subject let us clear up 98A (10).

The Chairman: On Clause 6, proposed Section 98A (10) - Appeal to court of appeal.

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Mr. Turner: It was my fault. Mr. Gilbert has a point here. Is it the wish of the Committee that on appeals to the county court, the county court conduct a trial *de novo* and rehash all the facts of the situation?

Mr. Schumacher: That is no trouble. You have to give the proper type of hearing then. If you have had any experience in this situation with the magistrates, it is not a troublesome matter.

The Chairman: I suggest that this section is important enough to stand and we will let the Minister take it under advisement.

Mr. Chappell: Mr. Chairman, I would like to say something before it stands so he will have it for advisement. The problem that Mr. Woolliams mentions in his Supreme Court does not apply in Ontario.

In Ontario you do not file a factum. You file a very short memo of law, in fact, which could easily be one page and the expense is just nothing. If we were making a decision on that basis it would be much simpler for other provinces to amend their rules to bring them in line with what is done in Ontario.

The other point I wanted to leave for the Minister's consideration is that it might be optional. In some areas obviously they think it would be cheaper to apply to a county court judge, in other areas they think it would be better to go to a court of appeal. I believe he should consider giving the person appealing the option.

[Interprétation]

M. Turner: Puis, on pourra recourir à la Cour d'appel?

M. Woolliams: Sur des questions de droit.

M. Schumacher: Aux termes de l'article 720 du Code criminel, cette procédure est déjà prévue.

M. Gilbert: Cela signifierait donc qu'un appel à la Cour de comté serait un nouveau procès, une reprise du procès.

Le président: Pour vous remettre sur le bon chemin, nous parlons de l'article 98A(5) et (6).

M. Woolliams: En toute déférence, monsieur le président, il s'agit plutôt de l'article 98A (10).

Le président: Je m'excuse. Article 6 du Bill relatif à l'article 98A (10). — Appel devant une cour d'appel.

M. Turner (Ottawa-Carleton): C'est ma faute. M. Gilbert a raison. Est-ce que le Comité désire que les appels soient dirigés en Cour de comté, que cette dernière cour fasse un nouveau procès?

M. Schumacher: Je crois qu'il faudrait alors revoir le genre de procès qui s'impose, et cela, je crois, ne sera pas tellement difficile si on peut réussir à sortir de la cour du magistrat.

Le président: Il me semble que cette disposition est assez importante pour qu'elle soit déférée afin de permettre au ministre de la prendre en considération.

M. Chappell: Je voudrais faire un commentaire avant de la réserver pour lui permettre de la prendre en considération. Le problème qu'a mentionné M. Woolliams, au sujet de la Cour suprême ne s'appliquerait pas en Ontario.

En Ontario on ne dépose pas un exposé des faits, mais uniquement un petit mémoire, peut-être d'une page, dont le coût est minime. Si nous prenons une décision en se fondant sur ce principe, il serait beaucoup plus simple pour les autres provinces de modifier leurs règlements afin de les conformer à ceux de l'Ontario.

Un autre point que j'aimerais porter à l'attention du ministre est qu'on pourrait laisser un choix. Dans certaines provinces, on pense qu'il est moins coûteux de faire une demande à une Cour de comté, tandis que dans d'autres provinces, il serait moins coûteux de le faire à la Cour d'appel. Cela devrait être laissé à la volonté de l'individu.

[Text]

The Chairman: Mr. Deakon?

Mr. Deakon: Mr. Chairman, I agree with Mr. Chappell. I may add that even if you go on trial *de novo* you are going to require a transcript of evidence which is also a costly procedure at times, depending on how long the previous trial lasted in the Magistrate's Court.

Mr. Chairman: Mr. Murphy?

Mr. Murphy: Mr. Chairman, I just wanted to point out the significance of the fact that the two people who want to keep the court of appeal as the only appellent court happen to be Toronto counsel, and speaking as someone living some distance from Toronto I would like to be able to handle these appeals in Sault Ste. Marie without having to go to Toronto.

The Chairman: Mr. MacEwan?

Mr. MacEwan: I support Mr. Schumacher in this. I know what Mr. Chappell means but in most areas of Nova Scotia, except in the City of Halifax, so far as county courts are concerned the judge is only available, say, twice a month and even that is little enough. To go to an appeal court is going to the big City of Halifax and it is a very, very costly thing. If I were in Toronto I would go along with the present law, but I certainly agree with Mr. Schumacher and this must apply in a good many other places in this country.

Mr. Schumacher: Think of people from Fort William and Port Arthur having to go all the way to Toronto. It is all very well for the Toronto . . .

Mr. Turner (Ottawa-Carleton): I think we have the feeling of the Committee, Mr. Chairman. We will try to draft for the next meeting an amendment to Clause 6, proposed Section 98A(10) that will incorporate Mr. Schumacher's suggestion, bearing in mind that we want to keep the appeal procedure as informal as possible.

I might say just in passing that those members who come from certain provinces where the attorneys general are considering changing the court structure might well want to consider some of the remarks made by Mr. Woolliams, Mr. Schumacher, Mr. MacEwan and Mr. Murphy about the centralization of justice, and I draw that to their attention, particularly some of the western provinces. They are very good points.

Some hon. Members: Thank you. Thank you, very much.

The Chairman: Mr. Hogarth?

Mr. Hogarth: I think we have made a major mistake in using the analogy of summary conviction appeals for this type of appeal.

[Interpretation]

Le président: M. Deakon?

M. Deakon: Je suis tout à fait d'accord avec M. Chappell, monsieur le président, et j'ajouterais que si vous avez de nouveau un procès, il faudra un compte rendu des témoignages, ce qui coûte assez cher parfois, tout dépend de la durée du procès antérieur dans la Cour de première instance.

Le président: M. Murphy?

M. Murphy: Je voudrais simplement signaler qu'il est très important que les deux personnes qui veulent que la Cour d'appel soit le seul recours sont des conseillers de Toronto et comme je n'habite pas près de Toronto j'aimerais bien pouvoir régler ces questions à Sault-Ste-Marie sans avoir à me rendre à Toronto.

Le président: M. MacEwan?

M. MacEwan: J'appuie monsieur Schumacher. Je sais ce que monsieur Chappell veut dire, mais en Nouvelle-Écosse, par exemple, sauf à Halifax, en ce qui concerne les Cours de comtés, le juge n'est là que deux fois par mois. Pour interjeter appel à la cour d'appel, il faut se rendre à Halifax, ce qui coûte excessivement cher. Si j'étais à Toronto, je serais d'accord avec le Bill, mais dans les circonstances, je suis d'accord avec M. Schumacher, et ceci s'applique sûrement ailleurs au Canada.

M. Schumacher: Pensez aux gens de Fort Williams et Port Arthur qui doivent se rendre à Toronto. C'est très bien pour Toronto . . .

M. Turner (Ottawa-Carleton): Je crois que nous nous sommes rendus compte de ce que le comité souhaite. Nous allons essayer de préparer une modification à l'article 6 du Bill relatif au nouvel article 98 (a) (10) du Code, selon ce que M. Schumacher a suggéré, sans oublier que nous voulons que la procédure d'appel soit aussi informelle que possible.

Je pourrais mentionner que les membres qui viennent de certaines provinces où les procureurs généraux étudient la possibilité de modifier la structure juridique, feraient bien de considérer les commentaires de MM. Woolliams, MacEwan, Schumacher et Murphy sur la centralisation de la procédure juridique. J'attire votre attention à ces points, et surtout à ceux d'entre vous des provinces de l'Ouest.

Des voix: Merci, merci beaucoup.

Le président: M. Hogarth?

M. Hogarth: Il me semble que nous avons fait une grosse erreur en nous servant de la comparaison des appels contre une condamnation sommaire.

[Texte]

The Chairman: Mr. Hogarth, are you speaking to the proposed Section 98A. (10)?

Mr. Hogarth: Yes; I think this appeal structure should have been set up by the person who is aggrieved issuing a summons to show cause to the Commissioner why the firearm should not be registered or the permit permitted to go, and that should be supported by affidavit; that the hearing should be on affidavit with the utilization of cross-examination on the affidavits, if necessary, and that an appeal therefrom should go direct to a county court judge or district court judge in chambers. That is exactly the way I feel about it.

The Chairman: Thank you, Mr Hogarth. We will return to Clause 6, proposed Section 98A.(5).

Mr. Turner (Ottawa-Carleton): I misled the Committee before, and we will get back to Clause 6, proposed Section 98A. (5). There was a feeling in

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the Committee—and Mr. Deakon brought it up—that where a permit was revoked the reasons for the revocation or the refusal should be set forth in writing and a copy of the extract of the provisions of this Section setting forth the rights to appeal should be on the notice form whereby the communication of refusal is given to the applicant.

The Chairman: Is there a motion?

Mr. Deakon: I move: that Bill C-150 be amended by striking out lines 8 to 10 on page 16 and substituting the following:

applicant, as the case may be, in writing of such revocation or refusal and of his reasons therefore and shall include in such notification a copy or extract of the provisions of this section.

M. Turner (Ottawa-Carleton): Voici la version française: que les lignes 6 à 10 de la page 16 soient remplacées par ce qui suit:

L'accusé doit donner au détenteur du permis ou du certificat d'enregistrement ou à l'auteur de la demande, selon le cas, avis écrit de cette révocation ou de ce refus et de ses raisons. Il doit inclure dans cet avis une copie ou un extrait des dispositions du présent article.

Amendment agreed to.

Clause 6, proposed Section 98A. (5), as amended agreed to.

The Chairman: Is there a motion concerning Clause 6, proposed Section 98A.(6) regarding length of appeal?

[Interprétation]

Le président: Est-ce que vous parlez de l'article 98 (a) (10)?

M. Hogarth: Oui. Je crois que cette structure d'appel aurait dû être établie par la personne lésée pour indiquer la raison pour laquelle les armes ne seraient pas enregistrées ou qu'un permis ne serait pas délivré, appuyé d'une attestation. Et que l'audience porte sur l'attestation avec un examen contradictoire des attestations, si nécessaire, et que tout appel contre une telle décision soit interjeté directement auprès du juge de comté ou de district. Voilà mon opinion.

Le Président: Merci. Maintenant nous pouvons reprendre l'article 6 du Bill relatif à l'article 98 (a) (5) du Code.

M. Turner (Ottawa-Carleton): J'ai induit le Comité en erreur, nous allons reprendre l'article 6 du Bill relatif au nouvel article 98 (a) (5). Le Comité a conclu, et je crois que M. Deakon en a parlé, que lorsqu'un permis est retiré, il faudrait indiquer les raisons par écrit, accompagné d'un extrait des dispositions de cet article quant au droit d'appel sur l'avis au moyen duquel on informe le requérant du refus.

Le Président: Est-ce qu'il y a une motion?

M. Deakon: Je propose que, le Bill 50 soit modifié par le retranchement des lignes 6 à 10 de la page 16 et leur remplacement par ce qui suit:

est refusée doit donner, au détenteur du permis ou du certificat d'enregistrement ou à l'auteur de la demande, selon le cas, avis écrit de cette révocation ou de ce refus et de ses raisons et doit inclure dans cet avis une copie ou un extrait des dispositions du présent article.

Mr. Turner (Ottawa-Carleton): This is the French version: let lines 6 to 10, on page 16, be replaced by the following:

The accused shall provide the holder of the permit or registration certificate or the applicant, as the case may be, with a written notification of such revocation or refusal and of his reasons therefor. He shall include in that notification a copy or an extract of the provisions of this section.

La modification est adoptée.

L'article 6 du Bill relatif au nouvel article 98 (a) (5) du Code amendé est adopté.

Le Président: Est-ce que quelqu'un veut proposer une motion sur l'article 6 du Bill relatif à l'article 98 (a) (6) du Code concernant la durée de l'appel.

[Text]

Mr. Chappell: I move that Bill C-150 be amended by striking out line 15 on page 16 and substituting the following:

notified of the action of decision, unless before or after the expiration of that period further time is allowed by a magistrate, appeal.

M. Cantin: Monsieur le président, en français, l'amendement devrait se lire: que le Bill C-150 soit modifié par l'insertion, après la ligne 15 de la page 16, des mots suivants:

À moins qu'un magistrat ne prolonge ce délai avant ou après son expiration . . .

Clause 6, proposed Section 98A.(6), as amended, agreed to.

The Chairman: Next for consideration is Clause 6, proposed Section 98A. (11) on page 17.

Mr. Turner: Ten and eleven go together, do they not? Is that the same point, Mr. Schumacher?

Mr. Schumacher: Yes.

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Mr. Turner: We will consider them together in our redraft.

Clause 6, proposed Section 98A. (11) stood.

On Clause 6, proposed Section 98F.—Seizure

Mr. Woolliams: I will move the amendment to Bill C-150 by striking out line 3 on page 20 and substituting the following: "(a) a person under the age of sixteen", to make it conform with the rest of the paragraphs amended.

Amendment agreed to.

Clause 6, proposed Section 98F (a), agreed to.

On Clause 6, proposed Section 98F (b) . . .

(b) any person in possession of a prohibited weapon or ammunition therefor,

Mr. Hogarth: Are we going on to the further part of that Section now, which is not a part of proposed Section 98F (b)? This deals with the seizure from juveniles and it appears to me that any seizure from a juvenile should be dealt with exactly the same as the seizure from a person of unbalanced mind under proposed Section 98G. That is to say, the weapon is not automatically forfeited to the Crown.

The Chairman: We are discussing proposed Section 98F (b) on page 20.

[Interpretation]

M. Chappell: Je propose que le bill C-150 soit modifié par l'insertion, après la ligne 15 de la page 16, des mots suivants:

à moins qu'un magistrat ne prolonge ce délai avant ou après son expiration.

Mr. Cantin: Mr. Chairman, in French, the amendment should read as follows: that Bill C-150 be amended by inserting, after line 15, on page 16, the following words:

unless the magistrate extends this period of time either before or after it has expired . . .

L'article 6 du Bill relatif à l'article 98 (a) (6) tel que modifié est adopté.

Le président: Nous passons donc à l'article 6 du Bill relatif à l'article 98 (a) (11) à la page 17.

M. Turner (Ottawa-Carleton): 10 et 11 vont ensemble je crois? N'est-ce pas, monsieur Schumacher?

M. Schumacher: Oui.

M. Turner (Ottawa-Carleton): Nous allons les étudier ensemble lors de la nouvelle rédaction.

L'article 6 du Bill relatif au nouvel article 98 (a) (11) du Code est réservé.

L'article 6 du Bill relatif au nouvel article 98 (F)—Saisies

M. Woolliams: Monsieur le président, je propose la modification du bill C-150 en remplaçant, à la quatrième ligne de la page 20, les mots «une personne âgée de moins de dix-sept ans» par «une personne âgée de moins de seize ans», afin qu'il y ait conformité avec les autres textes déjà amendés.

L'amendement est adopté.

L'alinéa a) du nouvel article 98F est adopté.

L'alinéa b) du nouvel article 98F:

b) une personne en possession d'une arme prohibée ou de munitions pour cette arme.

M. Hogarth: Est-ce que nous étudions maintenant cette section qui suit l'alinéa b) de l'article 98F mais qui n'en fait pas partie? On y traite de la saisie d'armes qui appartiennent à des mineurs. Il me semble qu'on devrait agir, dans ces cas-là, de la même façon qu'avec les personnes déséquilibrées tel que prévu à l'article 98G, c'est-à-dire que l'arme n'appartiendrait pas automatiquement à la Couronne.

Le président: Nous étudions l'alinéa b) de l'article 98F.

[Texte]

Mr. Hogarth: As I understand it, and I stand to be corrected, if a weapon is seized from a juvenile who has not got a permit, he has not committed any criminal offence, but the peace officer has the power to seize the chap's rifle or shotgun as the case may be. And then after giving the owner an opportunity to be heard, the magistrate might return it to the chap. He might not under certain circumstances, if the boy had by that time got a permit. But if he does not return it to him, it becomes automatically forfeited to Her Majesty, and that means it becomes Her Majesty's property.

It appears to me that it should be dealt with in the same way as weapons seized from those who are of unbalanced mind. As I understand the provisions of proposed Section 98G, there is a provision in there for a hearing and for the sale of the weapon and the return of the proceeds of the sale to the owner. Is that not so?

Mr. Scollin: Under proposed Section 98E?

The Chairman: Under proposed Section 98G.

Mr. Scollin: The provisions under proposed Section 98E, which are the other seizure provisions, to provide for a hearing by the magistrate.

Mr. Hogarth: I appreciate that, but the difficulty is if the magistrate does not return the weapon, it is forfeited.

Mr. Scollin: It is forfeited.

Mr. Hogarth: Yes, and then the lad who has had his rifle forfeited loses the value of it.

Mr. Scollin: He does.

Mr. Hogarth: Yes. Now, it appears to me that under the other provisions in 98G, where an insane person or person of unbalanced mind who has his weapons seized from him, those weapons are sold and the proceeds of the sale are remitted back to him. Is that not so?

Mr. Scollin: That is so. But of course the difference is that when you are dealing with a person under 16 who did not bother to get a permit, you are dealing with a chap who is not complying with the law even if he is not guilty of an offence. He is not complying with the law, but in 98G you are dealing with somebody who may in fact be perfectly innocent and who probably is a perfectly innocent person.

Mr. Hogarth: I appreciate that, but a young man might not know that he needs a permit, and I do not see why he should lose a rifle, that he saved to buy, merely because he has not got a permit.

Mr. Turner (Ottawa-Carleton): Let us just read the last lines of 98F:

[Interprétation]

M. Hogarth: Si je comprends bien, si l'arme est saisie d'un mineur qui n'a pas de permis, il n'a pas commis d'acte criminel, mais l'agent de la paix peut saisir l'arme. Après avoir donné au propriétaire de l'arme la chance d'exposer son point de vue, le magistrat peut, ou non, lui rendre son arme. S'il ne la lui rend pas, l'arme devient aussitôt propriété de Sa Majesté.

Il me semble qu'il faudrait agir comme dans le cas de personnes déséquilibrées. Si j'ai bien saisi, l'article 98G prévoit la tenue d'une enquête et la vente de l'arme de même que la remise du produit de la vente au propriétaire de l'arme. C'est bien cela, n'est-ce pas?

M. Scollin: Selon le nouvel article 98E?

Le président: Non, selon l'article 98G.

M. Scollin: L'article 98E, qui traite de saisie, contient des dispositions relatives à la tenue d'une enquête par le magistrat.

M. Hogarth: Oui, mais si le magistrat ne rend pas l'arme, elle est confisquée.

M. Scollin: Oui, elle est confisquée.

M. Hogarth: Et le jeune homme perd l'argent investi dans cette arme.

M. Scollin: Oui, il perd cet argent.

M. Hogarth: Selon l'article 98G, si les autorités saisissent une arme qui appartient à un malade mental ou une personne déséquilibrée, l'arme est vendue et le produit de la vente remis au propriétaire de l'arme.

M. Scollin: C'est exact. Mais lorsqu'il s'agit d'une personne de moins de 16 ans qui n'a pas de permis, c'est tout de même une personne qui ne se conforme pas à la loi, même si elle n'est coupable d'aucune offense. Elle ne se conforme pas à la loi tandis qu'à l'article 98G il est question d'une personne qui peut être inoffensive et qui est peut-être complètement idiote.

M. Hogarth: Oui, mais le jeune homme ne sait peut-être pas qu'il a besoin d'un permis. Je ne vois pas du tout pourquoi il perdrait son arme.

M. Turner (Ottawa-Carleton): Eh bien, lisons les dernières lignes de l'article 98F:

[Text]

... may seize such firearm or ammunition or such prohibited weapon or ammunition therefor and take it before a magistrate who may, after affording the person from whom it was seized or the owner thereof, if known, an opportunity to be heard, declare it to be forfeited to Her Majesty whereupon it may be disposed of as the Attorney General directs.

Now, how is the Attorney General going to dispose of it? One would think that in most cases he would say to the child, "Go and get a permit, and when you get the permit I will give you back the gun" or "When you are 16 you will get the gun back". Unless there is going to be some evidence of abuse of this proposed Section, we feel it is protective enough.

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Suppose the Attorney General sells the gun and then gives the child the money. First of all he is not going to get the same price for the gun; secondly, the child could go down and get the permit, or he is going to be 16 and he wants his gun back. And this disposition is not going to help him.

Mr. Hogarth: I have not made my point precisely clear. As I understand the liquor act in our province, if a minor is found in possession of alcohol in a motor vehicle, the motor vehicle may be seized and it is thereupon forfeited to Her Majesty. And if I reflect correctly, the Attorney General takes the position that the car has become Her Majesty's property and he is not empowered any longer to sell it and remit the proceeds back, or to give the car back. As a matter of fact, some social welfare agencies in the Province of British Columbia are using such motor vehicles. Now, can we not take out, in this proposed Section "declare it to be forfeited to Her Majesty" and leave "whereupon it may be disposed of as the Attorney General directs."?

Mr. Turner (Ottawa-Carleton): If it is not the property of Her Majesty, the Attorney General will not be able to dispose of it. When it is the property of Her Majesty, the Attorney General has the right to dispose of it as he directs. He has absolute discretion. I would hope that . . .

Mr. Hogarth: You mean he can give it back to some private citizen?

Mr. Turner (Ottawa-Carleton): Sure.

Mr. Hogarth: Other than the owner?

Mr. Turner (Ottawa-Carleton): No, no. He could give it back to anybody, but you have got to show some evidence of abuse here, Mr. Hogarth, before you worry about this particular section.

[Interpretation]

... peut saisir cette arme à feu ou ces munitions ou cette arme prohibée ou les munitions pour cette dernière et les porter à un magistrat qui peut, après avoir donné à la personne à laquelle elles ont été saisies ou à leur propriétaire, s'il est connu, l'occasion d'être entendus, les déclarer confisquées au profit de Sa Majesté et, sur ce, il peut en être disposé ainsi que l'ordonne le procureur général.

Comment est-ce que le procureur général va régler cette question? Dans la plupart des cas, il dira au jeune homme d'aller chercher son permis et qu'il recevra son arme lorsqu'il soumettra son permis ou lorsqu'il aura atteint seize ans. A moins qu'on puisse prouver qu'on abuse de cet article je crois qu'il joue le rôle qu'on veut qu'il joue.

Supposons que le procureur général vend l'arme et qu'il remet l'argent au jeune homme. Il n'en obtiendra pas le prix original. Ou bien il ira quérir un permis ou atteindra ses 16 ans et voudra reprendre son arme. Mais ces dispositions ne l'aideront pas.

M. Hogarth: Mon exposé n'était probablement pas assez clair. D'après la loi des alcools en vigueur dans ma province, si un mineur est arrêté alors qu'il transporte des boissons alcooliques dans son automobile, l'automobile peut être confisquée au profit de Sa Majesté. Le procureur général, parce que l'automobile appartient désormais à Sa Majesté, ne peut ni la vendre ni la remettre à son propriétaire. Certaines agences de bien-être social de la Colombie-Britannique utilisent de tels véhicules. Pourquoi ne pas éliminer les mots "les déclarer confisquées au profit de Sa Majesté" et conserver ce qui suit?

M. Turner (Ottawa-Carleton): Oui, mais si le ou les objets n'appartiennent pas à sa Majesté, le procureur général ne peut pas en disposer. S'ils appartiennent à Sa Majesté le procureur général peut en disposer comme il l'entend. Le choix lui appartient.

M. Hogarth: Est-ce qu'il peut rendre l'article à un individu?

M. Turner (Ottawa-Carleton): Evidemment.

M. Hogarth: Un individu qui n'est pas le propriétaire?

M. Turner (Ottawa-Carleton): Non. Il pourrait le remettre à n'importe qui, mais il faudrait prouver qu'il y a eu abus avant de s'inquiéter de cette possibilité.

[Texte]

Mr. Woolliams: With the greatest respect to the Minister, if we had Attorneys General as fair in their discretion as the Minister here, it would be different. But unfortunately we do not.

Mr. Turner (Ottawa-Carleton): I do not want to get into a political discussion with you Mr. Woolliams. This is what happens in Alberta.

Mr. Woolliams: Well, this is what I am going to bring out. Unfortunately we do not really get the word of the Attorney General at all. You write to some officer of the Crown, and with the greatest respect to him, he starts reading the fire print. He does not know what went on in Committee, and he does not know really what advice the Minister has given on this Section, and you can have more trouble, more correspondence.

Like Mr. Hogarth I would just like to see something spelled out, that providing all things were equal, as the Minister points out likely would happen, it would be assured that a Crown officer would make certain it did happen. I have seen things seized. I will tell you where you would run into it.

It is where someone is in violation, say if the regulations in reference to hunting. He has not got a hunting permit, so they seize all the guns; they seize everything. And if you can get those guns back in 18 months in most provinces you are lucky. And this is what I would like to see. I realize that men are supposed to be reasonable, but you run into unreasonable men under reasonable circumstances. And I think it could be spelled out, and I see no reason why there could not be a few words there. I back Mr. Hogarth wholeheartedly.

Mr. Turner (Ottawa-Carleton): How would you spell out the discretion? We have had this discussion before, Mr. Woolliams, on other sections of the Code. We have tried to arbitrate power wherever we can here, making it a tough gun law, protecting the safety of the public, but allowing areas of appeal and so on. The Criminal Code only operates on the assumption, which I think is a well-founded assumption, that police officers and law departments are going to try to enforce this thing reasonably. If they do not, there are methods of appeal from it. We do not at the moment have any evidence of abuse. Of course, this is a new section. I do not know how we could spell out the discretion.

The Chairman: Mr. Valade?

Mr. Valade: As a member of Parliament, I have had an experience of that sort. It dealt with the RCMP seizure of the hunting guns of a young student who went to hunt seals in an area where it was allowed. But he contravened the law because the area in which he

[Interprétation]

M. Woolliams: Sauf tout le respect que je dois au ministre, si nous avons des procureurs généraux qui sont aussi justes que le ministre lorsqu'il s'agit d'exercer ce choix, ce serait différent. Mais tel n'est pas le cas.

M. Turner (Ottawa-Carleton): Je ne veux pas provoquer de débat politique, monsieur Woolliams. Mais c'est ce qui se produit en Alberta.

M. Woolliams: C'est justement ce que je veux soulever. De fait, nous n'obtenons pas la décision du procureur général lui-même. Vous vous adressez à un représentant de la Couronne, et sauf le respect que nous lui devons, il se met à lire les petit caractères. Il ignore ce qui s'est passé en Comité et ce qu'a dit le ministre. Tout ceci peut entraîner de nouvelles difficultés. Comme monsieur Hogarth, je voudrais des précisions. Et je voudrais que se produise ce qui, selon le ministre, devrait se produire. J'ai été témoin de saisies.

Lorsque quelqu'un commet une infraction contre la chasse, les armes sont saisies et il est très rare qu'on puisse les récupérer avant dix-huit mois quelle que soit la province. J'admets que les hommes doivent être raisonnables, mais il y a des gens qui ne sont pas raisonnables, même quand les circonstances le sont. Il me semble qu'on pourrait l'indiquer en toutes lettres. Je ne vois d'ailleurs pas pourquoi ça ne peut pas se faire. J'appuie monsieur Hogarth de tout coeur, à ce sujet.

M. Turner (Ottawa-Carleton): Mais comment indiquer ce que doit être cette discrétion laissée au procureur général? Nous avons déjà discuté de cet aspect. Nous voulons que cette loi soit sévère, pour la protection du public, mais il y a possibilité d'appel. Le Code criminel présume que les officiers de police et les services chargés de faire respecter la loi agiront raisonnablement. S'ils n'agissent pas ainsi, il y a possibilité d'appel. Rien ne nous prouve qu'il y a abus. Évidemment, il s'agit ici, d'un nouvel article.

Le président: Monsieur Valade.

M. Valade: En tant que député, je suis au courant d'une expérience de ce genre. Il s'agit de la saisie du fusil de chasse d'un jeune étudiant par la Gendarmerie royale. L'étudiant s'en allait à la chasse aux phoques dans une région où cette chasse est permise. Mais il a

[Text]

was hunting was covered by the wild life law. The RCMP seized the firearms and confiscated them. I tried to intervene, and they said they were abiding by the books and this fellow could not recover his firearms. This is a clear-cut example.

Mr. Turner (Ottawa-Carleton): There are certain penal consequences attached to breaking the law, Mr. Valade, and . . .

Mr. Hogarth: On a point of order, Mr. Chairman.

Mr. Chairman: A point of order, Mr. Hogarth?

Mr. Hogarth: There is no appeal from this provision.

Mr. Turner (Ottawa-Carleton): No.

Mr. Woolliams: Just one last thought to follow it through. You are out shooting pheasants and you have to have a pretty quick eye to differentiate between a cock and a hen. A hen just happens to have a longer tail than you have anticipated, so you knock off a hen. Now if you have an officer out there, you have broken the law, and as a result you lose the guns. Now, to get those guns back under those conditions you might have an officer of the Crown say, "This fellow really went out to shoot hens, and not cocks". And that is one of our problems. I have run into this several times in my experience, and I am giving that kind of evidence now to the Minister. I know it does exist. I am still a little concerned about his authority in the hands of an officer of the Crown.

The Chairman: Mr. Blair?

Mr. Blair: Mr. Chairman, I wonder whether we are overlooking the wording of this section. It is true that the peace officer may seize the weapon, but it seems to me that the saving grace in this provision is that the case then has to be brought before a magistrate who may declare the weapon to be forfeited. But the initial discretion is in the hands of the magistrate. I would think that there would be proper cases where the magistrate will not make the order of forfeiture. There is nothing, as I see it, in this section which would compel a magistrate to make an order of forfeiture.

I think it would be quite open to him to say that under certain circumstances he would give this weapon back and lift the seizure. The great problem that arises in some of the other statutes with which we are familiar is that the seizure occurs automatically after the conviction for the offence—such is the case in a customs offence—and there just is no way to get it back. We must recognize that here we are interposing the decision of the magistrate before an order of forfeiture can be made. I should think that is quite an advance and it ought to give protection in all proper cases.

[Interpretation]

commis une infraction parce que cette région tombait sous le coup des lois sur la faune. L'arme a été confisquée. J'ai tenté d'intervenir mais la Gendarmerie m'a fait savoir qu'elle s'en tenait à la loi et que le jeune homme ne pourrait pas récupérer ses armes.

M. Turner (Ottawa-Carleton): Vous savez, il y a quand même des conséquences quand on commet une infraction à la loi.

M. Hogarth: J'invoque le Règlement, monsieur le président.

Le président: Oui, monsieur Hogarth.

M. Hogarth: Il n'y a pas d'appel contre cette disposition?

M. Turner (Ottawa-Carleton): Non.

M. Woolliams: Un dernier exemple. Vous êtes à la chasse. Vous avez besoin d'un bon oeil pour établir la différence entre le mâle et la femelle. Si cette dernière a la queue plus longue que vous pensez, que vous la tuez et qu'un policier est dans les environs, vous perdez votre fusil parce que vous avez violé la loi. Il peut arriver, lorsque vous tenterez de récupérer l'arme que l'officier de la Couronne affirme que votre intention première était d'abattre la femelle. Ce cas s'est déjà produit, c'est pourquoi je le mentionne au ministre. Je n'aime pas tellement qu'on accorde de tels pouvoirs aux officiers de la Couronne.

Le président: Monsieur Blair.

M. Blair: Je me demande, monsieur le président, si nous ne négligeons pas un peu le texte de l'article. On dit que l'arme peut être saisie mais, ensuite, il faut que la cause soit portée à l'attention d'un magistrat qui peut décider si une arme doit être confisquée. C'est le magistrat qui en décide d'abord, et il me semble qu'il y aura des cas où le magistrat n'ordonnera pas la saisie de l'arme. Dans cet article, je ne vois rien qui oblige le magistrat à ordonner la confiscation de l'arme.

Je crois qu'il a toute latitude de décider, dans certaines circonstances, s'il doit ou non lever la saisie et remettre l'arme à son propriétaire. Le problème qui se pose, dans certaines autres lois que nous connaissons, c'est que la saisie se fait automatiquement après la condamnation pour le délit, comme en cas de fraude de la douane, et il n'y a aucun moyen de récupérer les articles. Nous devons reconnaître que nous faisons alors intervenir la décision du magistrat avant qu'on émette un ordre de saisie, et il me semble que cela devrait accorder assez de protection dans tous les cas.

[Texte]

Mr. Turner (Ottawa-Carleton): What is the limit of this section? Somebody is under 16, has not a permit and is carrying a prohibited weapon. It is a very simple factual situation to determine. You know, we are not dealing with a freedom of action clause, we are dealing with very restrictive factual situations.

Clause 6, proposed Section 98F (b) agreed to.

The Chairman: Gentlemen, I would suggest that Clause 7 stand. This pertains to the question of homosexuality. There will a witness here on Thursday morning.

Mr. Hogarth: Mr. Chairman, I have a further clause that I wish to insert, if you recall.

The Chairman: What clause is this, Mr. Hogarth?

Mr. Hogarth: You will recall, Mr. Chairman, I was concerned when we dealt with proposed Section 91. We discussed proposed Section 91 and I asked that it stand. Then I revoked that request because I wanted to draft a new section to be inserted thereafter. My concern is that under the provisions of the present Criminal Code the onus of proof as to whether or not a weapon was or was not registered was upon the accused. That provided:

Where, in proceedings under section 88 or 90, any question arises with respect to permits or registration certificates, the onus lies upon the accused to prove that he has the permit or registration certificate.

Now it appears to me that what we have done in the omnibus bill is to remove that onus of proof. Where a person is found in possession of a restricted weapon in his house and he says absolutely nothing to the police or he is not even there, my concern is how it is going to be shown that he is in possession of an unregistered weapon.

Similarly I expressed concern that where a person is found on the street with a pistol concealed upon his person and he is asked if he is the holder of a permit and he says nothing, how is it going to be shown that the local registrar of firearms has not issued him a permit? The third situation I expressed some concern

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about was this. I think in all cases where anybody as been issued a permit or a certificate, that permit, where it involves the use of a firearm, should be kept in that person's possession concurrent with the firearm, or if it is a certificate of registration it should be kept in dwelling house or place of business to which the registration pertains. Accordingly, I would like to hear the views of the rest of the Committee on this matter because it seems to me to be extremely difficult to prove in certain circumstances that a pistol is unregistered.

[Interprétation]

M. Turner (Ottawa-Carleton): Quelle est la limite de cet article? Une personne de moins de 16 ans n'a pas de permis pour port d'arme et en possède une quand même. C'est une situation assez facile à déterminer. Il y a des causes bien définies dans cet ordre.

L'article 6, projet d'article 98F (b) est adopté.

Le président: Messieurs, je propose que l'article 7 soit réservé. Cet article porte sur l'homosexualité. Nous recevrons un témoin jeudi matin.

M. Hogarth: Monsieur le président, je veux insérer un autre article, si vous vous souvenez bien.

Le président: De quel article s'agit-il, monsieur Hogarth?

M. Hogarth: Vous vous souviendrez, monsieur le président, quelque chose me préoccupait lorsque nous avons étudié le projet d'article 91. Nous avons étudié le projet d'article 91 et j'ai demandé qu'il soit réservé. J'ai alors annulé cette demande, car je voulais rédiger un nouvel article qu'on aurait pu ajouter à la suite. Ce qui me préoccupe, c'est que, en vertu du Code criminel, le fardeau de la preuve, à savoir si l'arme était enregistrée ou non, retombe sur l'accusé. Le Code en prévoit que:

Lorsque, dans des procédures sous le régime de l'article 88 ou 90, une contestation s'élève au sujet des permis ou certificats d'enregistrement, il incombe à l'accusé de prouver qu'il a le permis ou le certificat d'enregistrement.

Il me semble que ce que nous avons fait dans le bill Omnibus, c'est que nous avons enlevé ce fardeau de la preuve. Si une personne a une arme à autorisation restreinte dans sa maison, et qu'elle ne dit rien, n'en parle pas à la police, car elle ne se trouve même pas là, je me demande comment on pourrait indiquer qu'elle possède une arme qui n'a pas été enregistrée.

De même, lorsqu'une personne est surprise dans la rue avec un revolver caché sur sa personne, si on lui demande si elle a un permis et qu'elle ne répond pas, comment va-t-on indiquer qu'elle n'a pas reçu de permis du registraire local d'armes à feu? Et ensuite, ce qui me préoccupe, c'est que, dans la plupart des cas où quelqu'un a reçu un permis, ou un certificat, ce permis qui porte sur l'emploi d'une arme devrait toujours être sur la personne ou bien, s'il s'agit d'un certificat, elle devrait le garder dans la maison d'habitation, ou dans la maison d'affaires, pour laquelle l'enregistrement a été fait. De même, j'aimerais savoir ce que les autres membres du Comité en pensent, parce qu'il me semble qu'il est très difficile de prouver, dans certaines circonstances, qu'une arme à feu n'a pas été enregistrée.

[Text]

The Chairman: Well, Mr. Hogarth, we have discussed proposed Section 91 (1) and (2) and carried them. Now, do you have an amendment to put forth on this section?

Mr. Hogarth: No, I want to put an amendment which would be proposed Section 91A which contains five subsections.

The Chairman: Do you have the amendment now?

Mr. Hogarth: Yes, I do, sir, but I do not want to propose it until I hear the views of the Minister because I might have missed something in this omnibus bill. I want to hear the views of the Minister on how we are going to prove in the case of a person who is found in possession of a pistol in his home, with no further evidence available, that that weapon is an unregistered one without calling the Commission or the Royal Canadian Mounted Police?

Mr. Turner (Ottawa-Carleton): Let us just go through the three suggestions that Mr. Hogarth is making. Going, first, on the basis of a principle, the burden of proving the existence of the permit would be on the Crown, and how can the Crown prove it . . .

Mr. Hogarth: Because they have to prove their case beyond a reasonable doubt.

Mr. Turner (Ottawa-Carleton): Well, we disagree, first of all, with that principle of law as enunciated by Mr. Hogarth. I want to refer him to his own Court of Appeal in British Columbia, the Queen versus Talbot 1961, 35 Western Weekly Reports at page 508 and then to 35 Criminal Reports at page 393. In that case the British Columbia Court of Appeal reaffirmed the principle that the person who sets up lawful authority to do an act must prove it and the prosecution need not prove the lack of lawful authority. That being so, the Crown was not under any duty to prove that the accused were not holders of licences under the Opium and Narcotic Drug Act. In other words, it was not up to the Crown to prove that the accused did not have a licence, it was up to the accused to prove that he did have a licence. And anybody who establishes the lawfulness of an act in defence to a criminal charge, in this case the possession of a permit, has the burden of proof of establishing that permit. Now it is true that there was an earlier section of the Code that has not been reproduced in this version of the gun law. That was found in Section 92 (1) of the existing Code. This is now the law:

Where, in proceedings under section 88 or 90 . . .

that is to say the registrations sections,

. . . any question arises with respect to permits or registration certificates, the onus lies upon the

[Interpretation]

Le président: Monsieur Hogarth, nous avons étudié le projet d'article 91 (1) et (2), et nous l'avons approuvé. Avez-vous un amendement à apporter à cet article?

M. Hogarth: Non, je voudrais proposer un amendement. Ce serait l'article 91A, qui comprendrait cinq paragraphes.

Le président: Pouvez-vous faire cet amendement dès maintenant?

M. Hogarth: Oui. Mais je ne veux pas le proposer avant d'avoir entendu l'opinion du ministre à ce sujet, car quelque chose a pu m'échapper dans ce bill Omnibus. Je veux entendre le ministre vous dire comment nous allons pouvoir prouver, dans le cas d'une personne qui a une arme à feu chez elle sans autre preuve, comment allons-nous prouver qu'elle n'a pas enregistré son arme sans s'adresser à la Commission ou à la Gendarmerie royale?

M. Turner (Ottawa-Carleton): Repassons les trois propositions qu'a faites M. Hogarth. En partant, d'abord, du principe que le fardeau de la preuve incombe à la Couronne pour prouver l'existence d'un permis, comment la Couronne peut-elle prouver . . .

M. Hogarth: Parce qu'elle doit faire la preuve de ce qu'elle avance, hors de tout doute raisonnable.

M. Turner (Ottawa-Carleton): Tout d'abord, nous ne sommes pas d'accord avec ce principe de droit que vient d'énoncer M. Hogarth. Veuillez vous reporter au rapport de la cour d'appel de la Colombie-Britannique, la Couronne contre Talbot, 1961, 35, *Western Weekly reports* page 508, et 35, *Criminal Reports* page 393. Dans ce cas, la cour d'appel de la Colombie-Britannique a réaffirmé le principe que quelqu'un qui prétend qu'il a l'autorité légale de faire un acte doit le prouver, et que le demandeur n'a pas à prouver cette autorité légale. Ainsi, la Couronne n'était pas obligée de prouver que l'accusé n'était pas détenteur d'un permis, en vertu de la Loi sur l'opium et les drogues narcotiques. Autrement dit, ce n'était pas à la Couronne de prouver que l'accusé n'avait pas de permis; c'était à l'accusé de prouver qu'il avait un permis. Et le défendeur qui établit la légalité d'un acte pour se défendre de l'accusation d'avoir commis un acte criminel, dans ce cas-ci, il s'agit de la possession d'un permis, doit prouver qu'il détient ce permis. C'est bien vrai, par contre, qu'il y a un autre article du Code qui n'a pas été reproduit dans la version actuelle. Il s'agit de l'article 92, paragraphe 1, du Code actuel. Voici ce que dit la loi:

Lorsque dans des procédures sous le régime de l'article 88 ou 90 . . .

c'est-à-dire les articles sur l'enregistrement.

. . . une contestation s'élève au sujet des permis ou certificats d'enregistrement, il incombe à l'ac-

[Texte]

accused to prove that he has the permit or registration certificate.

It is our view that that just enshrines in a statutory form what has always been the common law position, so that the section was not repeated in this version.

Now Mr. Hogarth suggests in his amendment that he wants to ensure that registration certificates or permits are kept on the person of the person carrying the weapon to which they relate and that they should be produced to a peace officer on demand. We take the view, Mr. Chairman, that the inability of a person to produce a registration certificate or a permit should not be made a crime. The inability of people to produce certificates or permits in the past has not apparently proved to be a problem, we have received no representations from law enforcement authorities suggesting the need for such an amendment, and I believe that it is hardly reasonable to make a person a criminal for failing to produce such a certificate for a permit on demand as long as somewhere he has the permit. If a person cannot produce such a certificate or permit I would suggest to the Committee that the peace officer

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would have reasonable and probable grounds for seizing the weapon under proposed Section 98E if the circumstances warranted the action. Now that is our view on the first suggestion.

The second suggestion of Mr. Hogarth was to make the failure to produce a certificate or permit evidence that the person in question is not a holder of the certificate or permit. In the case of summary conviction offences Section 702 of the Code places the burden of proof on the accused and in the case of indictable offences the burden of proving that he is the holder of a certificate or permit is on the accused, by reason of the fact that this is a fact especially within his knowledge; and that in order to establish the lawfulness of it he has to prove it. I again refer you to the Queen v. Talbot.

Therefore, to make failure to produce evidence that the person in question does not hold a certificate or permit we believe to be unnecessary.

The third suggestion, Mr. Hogarth, would make it necessary for the Commissioner or attorney general to issue a certificate that no permit or certificate has been issued, in evidence of the truth of that fact; in other words what he is asking the law to enshrine is a negative certificate—a certificate that there is no permit.

We believe, for the reason I have already given, that it is unnecessary, because the Crown does not have this burden of proof to begin with. If the accused does have the appropriate certificate he has to produce it to avoid conviction, in any event; and under Section 98 (H) if he produces a document

[Interprétation]

cusé de prouver qu'il a le permis ou le certificat d'enregistrement.

A notre avis, cela incorpore dans le Code criminel ce qui a toujours émergé du droit commun. M. Hogarth dit dans son amendement qu'il veut s'assurer que les permis ou les certificats d'enregistrement seront sur la personne de celui qui porte l'arme pour qu'il puisse produire ces certificats sur demande. Nous estimons pour notre part, monsieur le président, que le fait qu'une personne ne peut pas produire un certificat d'enregistrement ou un permis ne devrait pas constituer un acte criminel.

L'incapacité de produire immédiatement un permis ou un certificat d'enregistrement n'a jamais constitué de problème dans la passé; nous n'avons pas reçu d'instances de la part des policiers, signalant l'à-propos d'une disposition de ce genre, et je ne pense pas qu'il soit nécessaire que quelqu'un devienne criminel parce qu'il ne produit pas un permis sur demande. S'il ne peut pas produire ce certificat, je suis d'avis, alors, que l'agent de la sûreté pourra fort bien saisir l'arme, aux termes de l'article 98E, si les circonstances justifient cette saisie. Voilà ce que nous pensons au sujet de la première proposition.

La deuxième proposition de M. Hogarth, à savoir que le fait qu'on ne puisse produire un certificat d'enregistrement ou un permis montre fort bien que la personne en question n'en est pas détentric. Dans le cas des condamnations sur déclaration sommaire de culpabilité, article 702 du Code, c'est l'accusé qui a le fardeau de la preuve, et en cas de délit, il doit prouver qu'il est détenteur d'un permis ou d'un certificat parce que ce fait est en sa connaissance, et pour établir la légitimité de son permis, il doit lui-même fournir la preuve. Je vous réfère une fois de plus à la cause de la Couronne contre Talbot.

Ainsi, nous croyons qu'il n'est pas nécessaire que la personne en question établisse la preuve qu'elle ne détient pas un permis. Selon la troisième suggestion, monsieur Hogarth, le commissaire ou le procureur général devrait émettre un certificat selon lequel aucun permis ou certificat n'a été émis, prouvant ainsi la véracité de ce fait-là; en d'autres termes, on demande que la loi consacre un certificat négatif, c'est-à-dire un certificat certifiant qu'il n'y a pas eu de permis.

Et pour les raisons que j'ai déjà données, nous croyons que cela est inutile puisque tout d'abord la Couronne n'assume pas le fardeau de fournir des preuves. De toute façon si le prévenu possède le certificat en question, il doit le produire pour éviter la condamnation. Aux termes de l'article 98 (H), s'il

[Text]

purporting to be a permit, or registration certificate, that will be sufficient to assure his acquittal. For that reason we feel a negative certificate is unnecessary, and rather an unusual evidentiary device.

Mr. Hogarth: If I may reply, I know something of the Talbot case, but is it Regina vs Riley . . .

Mr. Scollin: Regina vs Riley is on a different point. The charge there involved the question of an unregistered firearm charge.

Mr. Hogarth: Yes, that is a little different from narcotics?

Mr. Scollin: During the course of, I think, the Crown case it became apparent that the firearm, although it was not registered to that particular accused, was, in fact, registered to somebody else.

Mr. Hogarth: Yes.

Mr. Scollin: And the court therefore said, "You have not proved your case. You charged the fellow with possession of an unregistered firearm. As it turns out, he was not the registered man but it was registered. So you fail."

Mr. Hogarth: It was an accepted principle in that case that the Crown prove that the weapon was not registered?

Mr. Scollin: No, I disagree. What happened in that case was that it turned out, on facts elicited during the course of the Crown's case, that the weapon was in fact registered.

The fellow was charged with possession of an unregistered firearm, and actually undertook his own appeal, as I recall—and pretty successfully, too. He convinced the Court of Appeal that they could not convict him of that offence even although the weapon was registered in somebody else—as, incidentally, it turned out in the course of the Crown's evidence.

Mr. Hogarth: In the Talbot case, dealing with narcotics, the possession of narcotics is absolutely prohibited anywhere, is it not?

Mr. Scollin: No; there are certain circumstances . . .

Mr. Hogarth: Without a licence?

Mr. Scollin: Without a licence.

Mr. Hogarth: But in these circumstances one can use a weapon that is registered in another's person

[Interpretation]

produit un document qui est censé être un permis ou un certificat d'enregistrement ce sera là une raison suffisante d'acquiescement. Pour cette raison, nous estimons que la production d'un certificat négatif est inutile, et que c'est là une façon de prouver qui sort de l'ordinaire.

M. Hogarth: Je sais quelque chose de l'affaire Talbot, mais je veux parler de la cause de la Couronne contre Riley . . .

M. Scollin: La cause de la Couronne contre Riley, est différente. Il s'agissait là d'une arme à feu non enregistrée.

M. Hogarth: Oui; cela diffère un peu des narcotiques.

M. Scollin: Au cours de ce procès, on a constaté que l'arme à feu était au nom de quelqu'un d'autre.

M. Hogarth: Oui.

M. Scollin: Par conséquent, le tribunal a décidé qu'on avait pas fait la preuve de cette cause. Vous avez accusé le gars d'être en possession d'une arme à feu non enregistrée. Il apparaît que l'arme a été enregistrée, mais au nom de quelqu'un d'autre. Ainsi vous perdez la cause.

M. Hogarth: On avait accepté le principe dans cette cause que la Couronne établisse la preuve que l'arme n'était pas enregistrée.

M. Scollin: Je ne suis pas d'accord. Dans cette cause, on s'est fondé plutôt sur les faits tirés au clair durant la plaidoirie de la couronne que l'arme à feu était de fait enregistrée. Le détenteur de l'arme était accusé de possession d'arme non enregistrée et a plaidé son propre appel, si je m'en souviens, avec succès. Il a convaincu la cour d'appel qu'ils ne pouvaient l'accuser de ce crime, même si l'arme était enregistrée au nom de quelqu'un d'autre comme ce fut le cas.

M. Hogarth: Dans la cause de Talbot relative aux narcotiques, la possession de narcotiques n'est-elle pas absolument interdite?

M. Scollin: Non, il y a certaines circonstances où . . .

M. Hogarth: Sous permis?

M. Scollin: Oui, sous permis?

M. Hogarth: Dans ces circonstances, on peut utiliser une arme à feu enregistrée au nom de quelqu'un

[Texte]

name, can one not? That is to say, I could borrow your registered pistol with which to go hunting?

Mr. Scollin: Only in the supervised . . .

Mr. Turner (Ottawa-Carleton): Only in my company; only if I am there while you shoot it.

Mr. Hogarth: I would like to have this clarified. As I read the provisions we have here all I have to have is a permit to use the pistol outside a dwelling house. I do not have to be the holder of the certificate of the restricted weapon. I can borrow a registered pistol, give the appropriate permit and go hunting, can I not, without the supervision of anybody else? The same situation arose in the Riley case, and it arises here.

Mr. Scollin: My own feeling is that a permit will not be issued to a man who is not in fact the registered holder of the weapon.

Mr. Hogarth: Would it be contrary to the public safety if I were an expert pistol target shooter and I went to the local registrar of firearms and said that I wanted to borrow your registered pistol to go target shooting? Why could he not issue me a permit?

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Mr. Scollin: There is nothing legally wrong in doing that, but what is the point relative to the amendment?

Mr. Hogarth: The point is that the provisions of the Riley case are going to arise again where you have to prove that this thing is, or is not, registered under certain circumstances.

Mr. Scollin: The view that has been taken is that the burden is on the man to prove it. This is a matter especially within his knowledge. It is not a matter that the Crown can be expected to negative across the country

Mr. Hogarth: I will watch your progress in the law reports, and let it go at that.

The Chairman: I assume that you will not be putting . . .

Mr. Hogarth: No.

The Chairman: We will turn to Clause 9.

We have finished the firearms except proposed Section 98A (10) and (11) which are stood.

Mr. Turner (Ottawa-Carleton): The two appeal provisions.

[Interprétation]

d'autre, n'est-ce pas? Autrement dit, je puis emprunter votre pistolet qui a été enregistré pour aller chasser?

M. Scollin: Seulement sous surveillance, seulement en ma compagnie, seulement dans la compagnie du détenteur.

M. Turner (Ottawa-Carleton): Uniquement en ma compagnie; vous ne pouvez tirer qu'en ma présence.

M. Hogarth: J'aimerais éclaircir ceci. Selon les dispositions que nous avons ici tout ce qu'il faut c'est un permis pour pouvoir utiliser un pistolet. Je n'ai pas à être le détenteur du certificat d'une arme à feu à usage restreint. Je peux m'emprunter ce pistolet, obtenir le permis voulu et aller chasser sans la surveillance de qui que ce soit. C'était la même situation dans la cause O'Reilly, et c'est la même chose à présent.

M. Scollin: J'estime pour ma part qu'un permis ne sera pas émis à quelqu'un qui ne serait pas le détenteur enregistré d'une arme à feu.

M. Hogarth: Serait-il contraire à la sécurité publique si en ma qualité de tireur-expert de pistolet, je me présentais chez le registraire local d'armes à feu et lui disais que je voulais emprunter votre pistolet enregistré pour aller faire du tir à la cible? Pourquoi ne me donnerait-il pas un permis?

M. Scollin: Il n'y aurait rien d'illégal, mais quel rapport y a-t-il entre cela et l'amendement?

M. Hogarth: Le fait est qu'il sera de nouveau question du cas Riley et il faudra que la Couronne prouve que l'arme à feu est ou n'est pas enregistrée dans certaines conditions.

M. Scollin: On a été d'avis que le fardeau repose sur celui qui doit le prouver. C'est une affaire qui dépend tout particulièrement de sa connaissance et ce n'est pas à la Couronne de prouver le contraire à travers tout le pays.

M. Hogarth: Je surveillerai vos progrès dans les décisions judiciaires, et laissons les choses là où elles sont.

Le Président: Vous ne présentez donc pas.

M. Hogarth: Non.

Le président: Revenons-en à l'article 9. Nous avons terminé la partie des armes à feu excepté le nouvel article 98A (10) et (11) du Code.

M. Turner (Ottawa-Carleton): Sauf les deux dispositions à la fin?

[Text]

The Chairman: Yes. Clause 7 on page 24 I think should stand. There will be a witness on Thursday morning to change this section. Clause 8 on page 24 has been passed, and the next one is Clause 9 on page 25.

Shall Clause 9 carry?

Mr. Hogarth: I would like to have some explanation of the change.

Mr. Turner (Ottawa-Carleton): Mr. Chairman, Clause 9 should be read together with parts of Clause 10 and Clause 13. The main clause here is Clause 13 relating to lotteries, and Clause 9 relates to that.

If I may I will make a short general statement on the lottery question and then you may find it appropriate to deal with Clause 8 and those parts of Clause 10 that deal with lotteries and then the general Clause 13 on page 31.

The most significant thing about the proposed changes respecting lottery schemes—and that phrase includes games of chance generally—is that this type of activity by religious and charitable organizations will be left largely to the discretion of the provincial authorities through provincially-issued licences.

The same considerations will apply to agricultural fairs and exhibitions, with respect to gaming connected with such fairs and exhibitions, conducted off the exhibition grounds, and with respect to gaming at public places of amusement.

We believe, Mr. Chairman, that this will enable local attitudes and local considerations to govern in this matter, and that it will be more accurately reflected at the provincial level.

The sections also provide, of course, that provincial governments will be authorized to conduct what is commonly referred to as a state lottery, and if it chooses to do so, that the federal government will be authorized to conduct a state lottery. That is my opening statement, Mr. Chairman.

Clause 9 merely relates to the definition of the common gaming house.

The Chairman: Shall Clause 9 carry? Mr. Valade?

Mr. Valade: I would like the Minister to clarify a point. Is the purpose of bringing the federal government into the Act to allow the use of such facilities as the postal facilities, should the federal government set up its own lottery system? Is the purpose of this section to allow federal services such as the post office to contravene the law?

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Mr. Turner (Ottawa-Carleton): It was felt Mr. Valade, that if provincial governments were to be

[Interpretation]

Le président: Oui. À mon avis, on devrait réserver l'article 7 du bill en page 24. Jeudi matin nous aurons un témoin pour modifier cet article. L'article 8 à la page 24 a été approuvé ainsi que l'article suivant du bill à la page 25.

L'article 9 est-il approuvé?

M. Hogarth: Pourriez-vous nous expliquer le changement.

M. Turner (Ottawa-Carleton): Monsieur le président, l'article 9 du bill devrait être lu en même temps que certaines parties des articles 10 et 13 du Bill. L'article principal est l'article 13 du bill qui porte sur les loteries, et l'article 9 du bill porte sur le même sujet.

Si vous le permettez, je vais faire un petit exposé très général sur la question des loteries et puis vous jugerez peut-être opportun d'étudier l'article 8 ainsi que les parties de l'article 10 du bill qui porte sur les loteries et enfin l'article général n° 13 du bill à la page 31.

Le point le plus significatif des changements proposés à l'égard des jeux de hasard et des loteries—et cela comprend tous les jeux de hasard en général—c'est que ce genre d'activité dans les organisations religieuses à but non lucratif ou charitables sera laissée en grande partie à la discrétion des autorités provinciales qui devront avoir des permis émis par le gouvernement provincial. Il en sera de même pour les foires agricoles et les expositions pour ce qui est des jeux en dehors des terrains de l'exposition, ainsi que les jeux qui se trouvent dans les parcs d'amusements publics.

Nous croyons, monsieur le président, que cette façon de faire donnera plus d'importance aux attitudes et aux considérations locales dont les résultats rejailiront sur le plan provincial.

Les articles prévoient aussi que les gouvernements provinciaux pourront organiser ce qu'on appelle communément, «loterie nationale» et le gouvernement fédéral pourra, s'il le veut, organiser sa propre loterie nationale. C'est tout ce que je voulais dire, monsieur le président.

L'article 9 du Bill porte simplement sur la définition d'une salle commune de jeux.

Le président: L'article 9 est-il approuvé? M. Valade?

M. Valade: J'aimerais simplement que le ministre éclaircisse un point. Le fait d'inclure le gouvernement fédéral dans la loi a-t-il pour objet de lui permettre l'usage des installations telles que celles de l'administration postale, advenant la décision du gouvernement fédéral d'organiser sa propre loterie? Cet article a-t-il pour objet de permettre aux services fédéraux, comme les postes, d'enfreindre à la loi?

M. Turner (Ottawa-Carleton): On estimait, monsieur Valade, que si les gouvernements provinciaux avaient

[Texte]

given the power to establish a provincial lottery or, through their agents, conceivably, a municipal lottery, the federal government ought to have the same power, if the federal government some day wanted to use it. This section does not establish a state lottery. It just allows the provinces, if they should so wish, or the federal government, if it should so wish, to embark on such a scheme. It is my understanding on the reading of the clause—and this relates particularly to Clause 13 and not Clause 9—that if a provincial government wanted a provincial lottery it would have to be done by an act of the legislature. If the federal government wanted to set up a federal lottery it would have to be done by Order in Council.

Mr. Valade: My point, Mr. Chairman, was that if this provision was not made, then the Post Office services could not be used?

Mr. Turner (Ottawa-Carleton): As I understand it, the Post Office facilities cannot be used to transmit an illegal lottery. In the future if a lottery were legal, that is to say, provincially authorized, then the mails would carry it within the province concerned. There is a provision in the bill prohibiting a lottery being distributed outside the province which has allowed it unless the receiving province also consents. Otherwise the mails would be refused, presumably, to interprovincial use of a provincial lottery.

Mr. Valade: Even with the present provision it would not be allowed.

Mr. Murphy: Is Montreal breaking the law?

Mr. Turner (Ottawa-Carleton): We do not know whether Montreal is breaking the law or not, Mr. Murphy, because it is before the Supreme Court of Canada. However this provision would not affect the Montreal lottery scheme, if it is a lottery, because there is no discretion given to municipal lotteries here unless they are agents of the province—unless they are provincially allowed.

Mr. Valade: May I ask, Mr. Chairman, another question of the Minister? Does this section deal with foreign lotteries? What are the provisions?

Mr. Turner (Ottawa-Carleton): A foreign lottery remains illegal.

Mr. Valade: Yes, I understand that. I understand that under the law governing foreign lotteries the person who wins the lottery, and whose name and face is being shown widespread across the country, cannot be prosecuted, but that the person selling the ticket is

[Interprétation]

l'autorisation d'organiser une loterie provinciale, ou de donner cette autorisation à leurs agents pour organiser une loterie municipale, le gouvernement fédéral devrait bénéficier du même pouvoir si un jour il désirait de s'en servir. Cet article n'établit pas le principe d'une loterie nationale. Il permet simplement aux provinces si elles le désirent, ou au gouvernement fédéral s'il le veut de lancer une telle initiative. Si je lis bien cette disposition et je parle notamment de l'article 13 et non à l'article 9, à savoir que si un gouvernement provincial désire une loterie, il lui faudrait adopter une loi de l'Assemblée législative en conséquence. Si le gouvernement fédéral désirait établir une loterie fédérale, il lui faudrait procéder par décret du Conseil.

M. Valade: Mais je disais, monsieur le président, que si cette disposition n'était pas adoptée, alors l'utilisation des services postaux ne pourrait pas être autorisée?

M. Turner (Ottawa-Carleton): Si je comprend bien, les services postaux ne peuvent être utilisés pour transmettre des renseignements sur une loterie illégale. À l'avenir, si les loteries provinciales étaient légales, le service postal alors pourrait servir dans la province en cause. Il y a une disposition dans le bill qui interdit qu'une loterie soit distribuée en dehors du territoire de la province à moins que la province récipiendaire donne son consentement. Autrement, le courrier serait refusé à la frontière.

M. Valade: Même avec les dispositions actuelles, cela ne serait pas permis, n'est-ce pas?

M. Murphy: La ville de Montréal enfreint-elle la loi?

M. Turner (Ottawa-Carleton): Nous ignorons si la ville de Montréal commet une infraction à la loi ou non, Monsieur Murphy, parce que la cause est entre les mains de la Cour suprême du Canada. Toutefois, cette disposition n'affecterait pas la loterie de Montréal, par exemple, car aucune discrétion ne serait donnée aux loteries municipales, à moins que les municipalités ne soient considérées comme des mandataires de la province. À moins qu'elles aient la permission de la province.

M. Valade: Une autre question que j'aimerais adresser au ministre, monsieur le président? Cet article porte-t-il sur les loteries étrangères? Quelles seraient les dispositions qui s'appliqueraient?

M. Turner (Ottawa-Carleton): Les loteries étrangères demeurent illégales.

M. Valade: Je comprends. La personne, notamment, qui gagne à une loterie et dont le nom et la photo est exposé à travers tout le pays, cette personne ne peut pas faire l'objet d'une poursuite, mais la personne qui vend le billet peut faire l'objet d'une poursuite aux

[Text]

prosecuted under the present legislation. Is there something in this proposed legislation to correct this?

Mr. Turner (Ottawa-Carleton): I would like to clarify that because under the present law, and even under the law as amended—I am referring to the present Criminal Code, Article 179, subsections (4) and (5):

(4) Every one who buys, takes or receives a lot, ticket or other device mentioned in subsection (1) . . .

Which would include a foreign lottery.

. . . is guilty of an offence punishable on summary conviction.

Subsection (5) reads:

(5) Every sale, loan, gift, barter or exchange of any property, by any lottery, ticket, card or other mode of chance depending upon or to be determined by chance or lot, is void, and all property so sold, lent, given, bartered or exchanged, is forfeited to Her Majesty.

That means that a foreign lottery is illegal that anybody participating in a foreign lottery scheme can be prosecuted; that any property passing under a foreign lottery scheme can be confiscated. Why is it not? Provincial Attorneys General do not choose to prosecute.

Mr. Valade: On that point, Mr. Chairman, the gains can be forfeited. Are there any such cases in the Department where the winnings of foreign lotteries have been forfeited?

Mr. Turner (Ottawa-Carleton): We do not enforce these provisions. They are enforced by provincial Attorneys General and we have no record of them.

Mr. Valade: Yes, but the Minister of National Revenue certainly should have the possibility of forfeiting those revenues because they are not . . .

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Mr. Turner (Ottawa-Carleton): At the moment they are still capital gains. They are not taxable so the Minister of National Revenue would not be interested.

The vanishing capital gains, Mr. Valade.

The Chairman: I have allowed some latitude, but if we are sticking right to Clause 9 this general discussion is not in order. We can pass on Clause 9 and proceed clause by clause. Perhaps this is better because we will be getting to the actual substance in Clause 13.

The Chairman: Mr. Gilbert.

[Interpretation]

termes de la loi à l'heure actuelle. Y a-t-il quelque disposition pour rectifier cette anomalie?

M. Turner (Ottawa-Carleton): J'ai une disposition ici qui semble expliciter tout cela. Aux termes de la loi actuelle, et même aux termes de la loi modifiée, les dispositions modifiées de la loi, l'article 179, paragraphes (4) et (5):

(4) quiconque achète, prend ou reçoit un lot, un billet ou un autre article dont fait mention le paragraphe (1). . .

ce qui comprendrait une loterie étrangère.

est coupable d'une infraction punissable sur déclaration sommaire de culpabilité

Le paragraphe 5 se lit comme suit:

(5) Toute vente, tout prêt, don, troc ou échange d'un bien au moyen de quelque loterie, billet, carte ou autre mode de tirage qui doit être décidé par la chance ou par le hasard ou en dépend, est nul, et tout bien ainsi vendu, prêté, donné, troqué ou échangé est confisqué au profit de Sa Majesté».

Autrement dit, les loteries étrangères sont illégales. Quiconque participe à un projet de loterie étrangère peut être poursuivi; toute propriété ou tout bien transmis par cette loterie étrangère peut être confisquée. Les procureurs généraux des provinces ne font pas de saisies mais pourraient le faire.

M. Valade: A ce sujet, monsieur le président, les gains peuvent être confisqués. Y a-t-il des cas de ce genre au ministère? Est-ce que les gains par des loteries étrangères ont été confisqués?

M. Turner (Ottawa-Carleton): Nous n'appliquons pas ces dispositions. Ce sont les procureurs généraux provinciaux qui devraient appliquer ces dispositions.

M. Valade: Oui, mais le ministre du revenu national pourrait sûrement confisquer ces revenus parce qu'ils ne sont pas . . .

M. Turner (Ottawa-Carleton): A l'heure actuelle, il s'agit encore de gains de capitaux. Ils ne sont donc pas imposables, alors le ministre du Revenu national n'est pas intéressé. Il faudrait donc imposer les gains de capitaux, monsieur Valade.

Le Président: J'ai accordé une certaine latitude. De fait, nous devrions nous en tenir à l'article 9. Nous pourrions peut-être passer rapidement sur l'article 9 et étudier les articles un à un. Nous en viendrons à la substance de la question, je crois, à l'article 13. Monsieur Gilbert?

[Texte]

Mr. Gilbert: Mr. Chairman, I have a question for the Minister. What provinces, if any, have made representations to the Department to have this law with regard to provincial lotteries changed? In other words, why the encouragement?

Mr. Turner (Ottawa-Carleton): To the best of our knowledge, Mr. Gilbert, we have received no formal submissions either for or against this particular provision from any provincial government.

Mr. Gilbert: Then if that is so, why are you making the change? If there have been no representations, why the necessity?

Mr. Turner (Ottawa-Carleton): We are assessing public opinion in this country. We feel that public opinion in this country is not unanimous about it and that it might vary from region to region. We are, therefore, leaving it to the regions, as that public opinion may be interpreted by provincial governments that their provincial Attorneys General have control over whether or not there should be lotteries permitted within provincial boundaries.

The Chairman: Mr. Blair.

Mr. Blair: This is not really on a question of order, but one of procedure. We are approaching the major amendment in Clause 13 which would be a new section, 179A. The sections we are now discussing are rather incidental to it, and I wonder whether we are advancing our position by, as it were, raising points of substance about Clause 13 at this stage in dealing with these incidental provisions. Perhaps the Committee would accept the suggestion that we should deal with the substantive provisions in Clause 13 and then come back to these incidental sections which would stand or fall on our decision on Clause 13.

The Chairman: Yes, I think this point is well taken. If Clause 13 does not pass, for example, then passage of Clause 9 or 10 would not be warranted. I think, if it is the wish of the Committee, we should turn to the substance, which is Clause 11, and then these questions which are now being asked would be in order.

Mr. Turner (Ottawa-Carleton): Clause 13.

The Chairman: Clause 13.

Mr. Turner (Ottawa-Carleton): Clause 13 and then come back to Clauses 9, 10 11 and 12?

The Chairman: Yes. Is that agreeable?

On clause 13, proposed Section 179A. *Permitted lotteries.*

The Chairman: Mr. Gilbert.

[Interprétation]

M. Gilbert: Monsieur le président, j'ai une question pour le ministre. Quelle province, s'il en est, a présenté des instances au ministère pour que la loi soit modifiée en ce qui a trait aux loteries provinciales? Autrement dit, pourquoi donne-t-on cette forme d'encouragement?

M. Turner (Ottawa-Carleton): Au meilleur de nos connaissances, monsieur Gilbert, nous n'avons reçu aucunes instances officielles, ni contre ni pour ce projet, de la part d'un gouvernement provincial.

M. Gilbert: Pourquoi alors les changements sont-ils apportés? Pourquoi la nécessité, s'il n'y a pas eu d'instances?

M. Turner (Ottawa-Carleton): Nous évaluons l'opinion publique. Nous estimons que l'opinion publique au Canada n'est pas unanime là-dessus et qu'elle peut varier de région en région. Par conséquent, nous laissons aux régions le soin de décider comment les gouvernements provinciaux doivent appliquer les opinions régionales et décider s'il doit y avoir, par conséquent, les loteries provinciales ou non.

Le Président: Monsieur Blair.

M. Blair: Je n'en appelle pas au règlement, mais à la procédure. Nous arrivons au principal amendement, c'est l'article 13 qui correspondra à un nouvel article, 179A. Les articles dont nous parlons maintenant sont plutôt accessoières, et je me demande si nous progressons vraiment lorsque nous soulevons des questions de fond au sujet de l'article 13? A cette étape-ci, je me demande si nous devrions nous arrêter aux accessoires avant d'en venir à l'essentiel. Peut-être le Comité accepterait-il ma proposition, savoir, que nous devrions nous en tenir à l'article de fond qui est l'article 13, puis revenir aux articles marginaux qui pourraient être réservés en attendant.

Le Président: Oui, je crois que ce point est bien valide. Si l'article 13 n'est pas adopté, par exemple, les articles précédents tomberaient d'eux-mêmes. Par conséquent, nous pourrions peut-être en venir immédiatement à l'article 13, et puis revenir à l'article 10, 11 et 12. L'article 13, à la page 31.

M. Turner (Ottawa-Carleton): L'article 13.

Le président: L'article 13

M. Turner (Ottawa-Carleton): L'article 13 et ensuite revenir aux articles 9, 10, 11 et 12?

Le Président: Oui, si les membres sont d'accord.

Sur la clause 13, l'article proposé 179A—*Loteries permises.*

Le Président: Monsieur Gilbert.

[Text]

Mr. Gilbert: Just to follow up the question that I asked the Minister: he says that there have been no representations by provincial governments in regard to these changes, then you are accepting that full responsibility for the full responsibility for this change. Is it right to assume that you are personally in favour of these state lotteries?

Mr. Turner (Ottawa-Carleton): I do not think you want to take any assumption one way or the other, Mr. Gilbert. The government feels that this is a matter to be left to provincial discretion.

The Chairman: Mr. Peters.

Mr. Peters: Mr. Chairman, in regard to the remarks the Minister made a few minutes ago about the fact that the federal government has been given the discretion of passing by Order in Council the right to conduct federal lotteries, but, as far as the provincial governments are concerned, their responsibility has to be by way of an enactment. What is the reason for the difference?

Mr. Turner (Ottawa-Carleton): Because this is a federal law. There is no way a province could test political opinion short of going before the legislature. This

• 1150

is a federal law which is sufficient to implement any federal action. There is nothing in here to implement provincial action and you cannot implement provincial action by Order in Council based on a federal statute. It is a constitutional problem.

Mr. Peters: May I ask another question? Why is it the government's position to ban international lotteries when obviously these are being engaged in very generally and there are very few prosecutions? There have been seizures, but very few prosecutions in the past—and it is generally accepted, I would think, by the majority of people that we represent. I do not think there is a riding in this country where Irish Sweepstake tickets are not being sold by the provincial police and others who travel around the country, and I have bought them from the provincial police. Why should we be so holier-than-thou in saying that this is not acceptable?

Mr. Turner (Ottawa-Carleton): So far as the federal government is concerned I hope we are not being sanctimonious about this, Mr. Peters. We are merely saying, so far as domestic lotteries are concerned, that that is a matter for provincial discretion. So far as foreign lotteries are concerned, they are still illegal but their enforcement is left—as is the enforcement of the Criminal Code—to provincial jurisdiction.

Mr. Hogarth: As I understand it, Mr. Minister, one of the great provisions of the proposals with respect to lotteries is that the domestic governments, be they the

[Interpretation]

M. Gilbert: Pour donner suite à la question que j'ai posée au ministre: le ministre a dit qu'il n'avait reçu aucune instance de la part des gouvernements provinciaux au sujet des changements, par conséquent, il assume la responsabilité de ces changements. Peut-on donc supposer que le ministre personnellement est en faveur des loteries nationales?

M. Turner (Ottawa-Carleton): Je ne suis en faveur de rien, monsieur le président. Le gouvernement estime simplement que c'est une question qui devrait être laissée à la discrétion des provinces.

Le Président: Monsieur Peters.

M. Peters: Monsieur le président, en ce qui concerne les remarques du ministre faites il y a quelques minutes portant sur le fait qu'il a été laissé à la discrétion du gouvernement fédéral de se donner par décret du conseil, le droit de tenir des loteries fédérales, mais en ce qui concerne les gouvernements provinciaux, leur responsabilité doit être fondée sur un acte législatif. Pourquoi cette différence?

M. Turner (Ottawa-Carleton): Parce qu'il s'agit là d'une loi fédérale. Une province ne peut pas vérifier l'opinion politique sinon en assemblée législative. Il

s'agit là d'une loi fédérale qui permet d'appliquer n'importe quelle initiative fédérale. Mais rien ne permet d'appliquer l'initiative provinciale. Nous ne pouvons pas, je crois, par décret du conseil, appliquer une initiative provinciale, en fonction d'une loi fédérale. Il s'agit d'un problème d'ordre constitutionnel.

M. Peters: Puis-je poser une autre question? Pourquoi le gouvernement s'oppose-t-il aux loteries internationales, alors qu'évidemment elles sont presque partout au pays et qu'il y a très peu de poursuites? Il y a eu des saisies, mais très peu de poursuites par le passé et ceci, je crois, est généralement accepté par la majorité des gens que nous représentons. Je ne crois qu'il existe un comté au pays... où les tickets du Sweepstake Irlandais ne sont pas vendus par la Police provinciale ou d'autres gens qui voyagent, et j'ai moi-même obtenu des tickets de la Police provinciale. Pourquoi être aussi «Sainte-Nitouche» et dire que c'est inacceptable?

M. Turner (Ottawa-Carleton): En ce qui concerne le gouvernement fédéral, nous ne sommes pas je pense trop cagots, nous disons simplement qu'en ce qui concerne les loteries à l'intérieur du Canada, cette question relève des autorités provinciales. En ce qui concerne les loteries étrangères, elles sont encore illégales mais l'application de la Loi, tout comme pour la Loi pénale, est laissée aux juridictions provinciales.

M. Hogarth: Si j'ai bien compris, monsieur le ministre, une des principales dispositions des nouvelles propositions relatives aux loteries, c'est que les gouverne-

[Texte]

federal or the provincial government, have control through licencing provisions over who is going to operate a lottery, what the stakes are going to be and all aspects of it. The Lieutenant Governor in Council can use discretion where certain types of persons might be infiltrating that particular business which will now become lawful, and this is a control they do not have over foreign lotteries. Therefore I submit that is a very valid reason for keeping foreign lotteries illegal. I am not pointing at any particular foreign lotteries but there are certainly a number of them which are questionable when it comes to what is happening to the money at the other end.

Mr. Turner (Ottawa-Carleton): That is right. The reason, of course, we can contemplate allowing provincial governments to legalize—if I may use that word—domestic lotteries is that they can set the terms of the conduct of those lotteries under provincial licence. They have absolute control as to the terms, the amount of money involved, and so on, whereas there is no way of controlling the operation of a foreign lottery.

Mr. MacGuigan: Mr. Chairman, as I understand it one of the principal purposes of this reform of the Criminal Code is to bring the law into accord with the contemporary moral views of the people, and if we are going to have a section of the Criminal Code which not only will not be enforced but cannot be enforced because people believe in buying tickets in foreign lotteries and intend to continue doing so, and the attorneys general are obviously not going to convict, then perhaps we ought to have a procedure for licensing foreign lotteries as well, and which the Government of Canada might establish.

Mr. Turner (Ottawa-Carleton): I will accept that proposition, Mr. MacGuigan. If there are provincially-authorized lotteries there might be less inducement to buy a ticket on a foreign lottery.

Mr. MacGuigan: That is true.

The Chairman: Mr. Gilbert.

Mr. Gilbert: Are you taxing the earnings on these lotteries? With the shortage of money that the federal government has at the moment it would be a prime opportunity.

Mr. Turner (Ottawa-Carleton): I find just being Attorney General is a full-time occupation, Mr. Gilbert.

Mr. Gilbert: I thought you would bring it to the attention of the Minister of National Revenue.

The Chairman: Mr. Peters?

Mr. Peters: I do not really see how we can allow this to happen. The Minister has indicated that it is not

[Interprétation]

ments, à l'intérieur du Canada, qu'ils soient fédéral ou provinciaux, ont le pouvoir d'autoriser les loteries, de fixer les prix et tous les autres aspects. Le Lieutenant Gouverneur en Conseil pourra utiliser sa discrétion si quelqu'un s'infiltrait dans cette organisation qui devient légale, contrôle qu'on ne peut pas exercer sur les loteries étrangères. Et il me semble que c'est là une raison valide pour que les loteries étrangères restent interdites. Je ne vise aucune loterie étrangère en particulier, mais je crois que certaines sont quelque peu douteuses en ce qui concerne l'emploi de l'argent.

M. Turner (Ottawa-Carleton): Oui, c'est exact. Nous voulons permettre aux gouvernements provinciaux de pouvoir légaliser, si je peux employer ce mot, des loteries domestiques dont ils pourront définir les termes dans des permis provinciaux. Les provinces auront le contrôle complet, elles pourront déterminer les sommes d'argent en cause et autres, tandis qu'il n'y a aucune façon de contrôler le fonctionnement des loteries étrangères.

M. MacGuigan: Monsieur le président, si j'ai bien compris les principaux objectifs des modifications du Code criminel, c'est que la Loi soit adaptée aux vues morales actuelles, contemporaines. Si nous devons avoir un article au Code criminel qui ne peut être appliqué, qu'il ne l'est pas parce que les gens croient dans les loteries étrangères et continueront à acheter des billets et si les Procureurs généraux ne doivent pas intenter d'actions, alors le gouvernement devrait peut-être prévoir une procédure d'autorisation des loteries étrangères?

M. Turner (Ottawa-Carleton): J'admet votre point de vue, M. MacGuigan, mais s'il y a des loteries provinciales autorisées, alors les gens auront moins de raisons d'essayer d'acheter des billets de loteries étrangères.

M. MacGuigan: Bien sûr.

Le président: M. Gilbert.

M. Gilbert: Vu la pénurie, la lacune de fonds dont souffre le gouvernement fédéral, n'y aurait-il pas lieu d'imposer les gains sur ces loteries?

M. Turner (Ottawa-Carleton): Je trouve que déjà mon poste de Procureur général me donne assez de travail.

M. Gilbert: Je pensais que vous pourriez le signaler au ministre du Revenu national.

Le président: M. Peters?

M. Peters: Monsieur le président, je ne vois pas comment nous pouvons laisser cela survenir. Le ministre

[Text]

enforceable. I am of the opinion that we should look at the possibility of licensing foreign lotteries conducted in this country so that they are enforceable. I have always been concerned about the fact that a person selling Army and Navy or Irish Sweepstakes in this country may not be giving us a fair deal; we may be getting cheated in that that the money may not be put in or the tickets may not be turned in. It seems to me that if we are going to have lotteries at all we have to provide a certain amount of protection for the people who are purchasing these lottery tickets.

As it now stands we just turn our heads. We do not say they are a bad thing; we just say we will not recognize them. It seems to me we should have legislation in order to licence people who are selling international lottery tickets in this country and that we should enforce any regulations we set up.

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Mr. Turner (Ottawa-Carleton): In reply to Mr. Peter's remark, the difficulty is that we have no way of enforcing the conditions attaching to a foreign lottery. There is just no possibility of supervision and even if we were so inclined, that would be our problem in acceding to your suggestion.

Mr. Peters: Mr. Chairman, at present if some law officer wishes to enforce a conviction against someone for purchasing these tickets the Code provides him with the machinery.

Mr. Turner (Ottawa-Carleton): Right.

Mr. Peters: And yet they are not enforcing it. There is certainly no direction being given to enforce it so I think we should take it out. If we cannot enforce it and have no intention of enforcing it, and believe that society does not want it enforced, then it seems awfully foolish to revamp the Code and leave it in when it is a non-enforceable provision.

Mr. Turner (Ottawa-Carleton): There may be some merit in what you say, Mr. Peters, but I think the provincial attorney general would probably prefer to await their experience in handling a domestic lottery before they broadened out into the international sphere.

The Chairman: Mr. Chappell?

Mr. Chappell: As I see it, Mr. Chairman, the Government of Canada is not going to start a lottery business in Canada, and there will not be any lotteries in Canada at all unless and until some province passes legislation. It strikes me that to consider licensing and regulating foreign lotteries before we have lotteries in Canada at all would be premature. The enforcing of our present law is a different thing altogether. However, I do not see how we can consider control over foreign lotteries until we have some in operation in Canada.

[Interpretation]

indique que cela ne peut pas être appliqué. Il me semble que nous devrions étudier la possibilité d'autoriser les loteries étrangères au Canada pour pouvoir les contrôler. Je me suis toujours demandé si une personne qui vend des billets de loterie des *Sweepstakes* Irlandais de l'Armée ou de la Marine n'est peut-être pas juste avec nous; l'argent n'est peut-être pas versé, les billets ne sont peut-être pas retournés. Il me semble que si nous avons des loteries, nous devons assurer une certaine protection aux acheteurs de billets. A l'heure actuelle, nous ne faisons que les ignorer; nous ne disons pas que c'est mauvais; nous les laissons faire, nous ne reconnaissons pas cette activité. Il me semble que nous devrions avoir des dispositions législatives accordant l'autorisation de vendre des billets de loteries étrangères et nous devrions veiller à ce que les règlements soient respectés.

M. Turner (Ottawa-Carleton): La difficulté, en ce qui concerne les observations de M. Peters, c'est que nous ne pouvons pas du tout contrôler ou vérifier les conditions régissant les loteries étrangères. Il n'y a aucun moyen de surveillance. Même si nous voulions le faire, nous n'aurions pas les moyens de le faire.

M. Peters: Monsieur le président, si un policier, un agent de paix désire accuser quelqu'un pour avoir acheté des billets de loterie, peut-il légalement le faire?

M. Turner (Ottawa-Carleton): Oui.

M. Peters: Et pourtant on ne le fait pas. Aucune directive ne demande l'application. Je pense que nous devrions tout simplement biffer l'article. Si on ne peut pas l'appliquer, si on ne veut pas l'appliquer, si on pense que la société ne veut pas qu'on l'applique, il semble ridicule de modifier le code et de laisser cette disposition inapplicable.

M. Turner (Ottawa-Carleton): Ce que vous dites est peut-être fondé, monsieur Peters mais je crois que les procureurs généraux provinciaux aimeraient peut-être voir l'expérience qu'ils vont acquérir au chapitre des loteries domestiques avant de s'occuper des loteries étrangères.

Le président: M. Chappell?

M. Chappell: Monsieur le président, si j'ai bien compris, le gouvernement du Canada ne veut pas se lancer dans des loteries. Il n'y aura pas de loterie au Canada tant qu'une province n'adoptera pas une mesure législative en ce sens. Il me semble qu'il serait prématuré de songer à accorder des permis et à contrôler des loteries étrangères avant d'avoir des loteries au Canada. Ce n'est pas du tout la même chose que d'essayer d'appliquer la Loi actuelle. Je ne vois pas comment nous pourrions commencer à réglementer les loteries étrangères alors que nous n'avons pas de loteries au Canada.

[Texte]

The Chairman: Mr. Gervais?

Mr. Gervais: You said that there has been no application of the law, but so far as Quebec is concerned I know of several instances where seizures have been made over the past few years. I will readily admit that the law is not applied fully, but certainly an attempt is made in certain instances.

The Chairman: Mr. MacEwan?

Mr. MacEwan: Mr. Chairman, I just wanted to ask the Minister if "meaningful consultation" was—which is the well-known phrase—carried out with the attorneys general of the various provinces on many or most of these amendments which are now before us?

Mr. Turner (Ottawa-Carleton): Yes. Every year the federal Department of Justice meets with the Commission on Uniformity of Legislation in Canada representing all of the provincial attorneys general. The subject of lotteries has really been discussed off and on for the last five or six years at those conferences. Bill C-195, the predecessor to this bill, from which there have only been a few changes—some of those changes, as a matter of fact, as a result of comments by provincial attorneys general or their representatives—in its C-195 form received a week's study by the Uniformity Commissioners in late August of 1968.

Mr. MacEwan: I take it from what the Minister told Mr. Gilbert that this particular amendment which we now have before us was not discussed with the attorneys general.

Mr. Turner (Ottawa-Carleton): No, other than at the Uniformity Conference. However, as a result of some of their submissions Bill C-195 was changed as it now appears in C-150, so there certainly was "meaningful consultation" in the way it was understood by Premier Smith and myself.

Mr. MacEwan: I will tell him.

The Chairman: Gentlemen, it is now 12 o'clock. Perhaps this would be a good time to adjourn. I think some of the members have certain duties elsewhere.

We do not have a meeting this afternoon. Our next meeting will be on Thursday at 9.30 a.m., at which

● 1200

time we will have Professor Mewett as our witness.

[Interprétation]

Le président: M. Gervais?

M. Gervais: Vous avez dit que la Loi n'avait jamais été appliquée, mais je connais plusieurs cas au Québec, où des saisies ont été effectuées. Je reconnais que la Loi n'est pas appliquée dans toute sa rigueur, mais on a parfois essayé de l'appliquer.

Le président: M. MacEwan?

M. MacEwan: Monsieur le président, est-ce que des consultations sérieuses avec les procureurs généraux des différentes provinces ont eu lieu pour tous ces amendements que nous étudions?

M. Turner (Ottawa-Carleton): Oui. Chaque année le ministère fédéral de la Justice rencontre la Commission pour l'uniformité de la législation au Canada. Cette commission représente tous les procureurs généraux des provinces. La question des loteries a été discutée occasionnellement depuis cinq ou six ans, lors de ces conférences, le Bill C-195, prédécesseur de ce bill et auquel certains changements seulement ont été apportés, certains changements résultant de commentaires faits par les procureurs généraux ou leurs représentants. Le bill C-195 donc, dans sa forme primitive, a fait l'objet d'une semaine d'étude par les commissaires préposés à l'uniformité, à la fin d'août 1968.

M. MacEwan: Cet amendement dont nous sommes saisis, d'après ce que le ministre a dit à M. Gilbert, n'a pas été discuté avec les procureurs généraux, n'est-ce pas?

M. Turner (Ottawa-Carleton): Non, sauf aux conférences sur l'uniformité. Cependant, à la suite de leurs commentaires, le Bill C-195 a été changé. Il y a donc eu des «consultations sérieuses» du moins c'est l'interprétation que le premier ministre Smith et moi-même donnons à ces mots.

M. MacEwan: Je lui dirai.

Le président: Messieurs, il est midi. Je crois que certains députés ont des tâches ailleurs. C'est peut-être le moment d'ajourner.

Nous n'avons pas de réunion cet après-midi. Notre prochaine réunion aura lieu jeudi à 9 h 30 et nous

aurons alors un témoin, le Professeur Muir.

OFFICIAL BILINGUAL ISSUE

FASCICULE BILINGUE OFFICIEL

HOUSE OF COMMONS

CHAMBRE DES COMMUNES

First Session

Première session de la

Twenty-eighth Parliament, 1968-69

vingt-huitième législature, 1968-1969

STANDING COMMITTEE

COMITÉ PERMANENT

ON

DE LA

JUSTICE AND LEGAL AFFAIRS

JUSTICE ET DES QUESTIONS
JURIDIQUES

Chairman

Mr. Donald R. Tolmie

Président

MINUTES OF PROCEEDINGS
AND EVIDENCE

PROCÈS-VERBAUX ET
TÉMOIGNAGES

No. 10

THURSDAY, MARCH 13, 1969

LE JEUDI 13 MARS 1969

Respecting

Concernant le

BILL C-150

BILL C-150

Criminal Law Amendment Act, 1968.

Loi de 1968 modifiant le droit pénal.

Appearing

A comparu:

Minister of Justice and
Attorney General of Canada.

Hon. John N. Turner

Ministre de la Justice et
Procureur général du Canada.

WITNESSES—TÉMOINS

(See Minutes of Proceedings)

(Voir Procès-verbal)

THE QUEEN'S PRINTER, OTTAWA, 1969

L'IMPRIMEUR DE LA REINE, OTTAWA, 1969

STANDING COMMITTEE ON
JUSTICE AND LEGAL
AFFAIRS

COMITÉ PERMANENT
DE LA
JUSTICE ET DES QUESTIONS
JURIDIQUES

Chairman
Vice-Chairman

Mr. Donald Tolmie

Président
Vice-président

and Messrs.
et Messieurs

Blair,
Cantin,
Chappell,
Deakon,
Gervais,
Guay (Lévis),

¹ Knowles (Winnipeg-
North Centre)
Hogarth
² Jerome
MacEwan,
MacGuigan,
McCleave,

McQuaid,
Murphy,
Peters,
Rondeau,
Schumacher,
Valade,
Woolliams—20.

(Quorum 11)

Le secrétaire du Comité

ROBERT V. VIRR
Clerk of the Committee

¹ Mr. Knowles (Winnipeg North Centre) replaced Mr. Gilbert on March 13, 1969

¹ M. Knowles (Winnipeg North Centre) remplace M. Gilbert le 13 mars 1969.

² Mr. Jerome replaced Mr. Ouellet on March 13, 1969.

² M. Jerome remplace M. Ouellet le 13 mars 1969.

[Text]

MINUTES OF PROCEEDINGS

THURSDAY, March 13, 1969
(12)

The Standing Committee on Justice and Legal Affairs met this day at 9.38 a.m., the Chairman, Mr. Tolmie, presiding.

Members present: Messrs. Cantin, Chappell, Deakon, Gervais, Guay (*Lévis*), Hogarth, MacEwan, MacGuigan, Knowles (*Winnipeg North Centre*), McQuaid, Murphy, Peters, Schumacher, Tolmie, Valade, Woolliams—(16).

Also present: Honourable John N. Turner and Mrs. MacInnis, M.P.; Mr. Fortin, M.P.; Mr. Ritchie, M.P.; Mr. Duquet, M.P.

Witnesses: Professor Alan W. Mewett, Faculty of Law, University of Toronto; *From the Department of Justice:* Mr. D. H. Christie, Assistant Deputy Attorney General.

The Committee resumed its consideration of Bill C-150.

On motion of Mr. Woolliams,

It was agreed that:—Messrs. Mewett and Lavigne be reimbursed for reasonable travelling and living expenses incurred during their appearance before the Justice and Legal Affairs Committee during consideration of Bill C-150.

The Chairman introduced Professor Mewett to the Committee.

Mr. Woolliams asked Professor Mewett to express his views on the technical and legal aspects of clauses respecting homosexuality and abortion.

The Committee questioned Professor Mewett on his statement.

There being no further questions, the Committee adjourned at 11.33 a.m. to the call of the Chair.

[Traduction]

PROCÈS-VERBAUX

Le JEUDI 13 mars 1969.
(12)

Le Comité permanent de la justice et des questions juridiques se réunit ce matin à 9 h. 38, sous la présidence de M. Tolmie.

Présents: MM. Cantin, Chappell, Deakon, Gervais, Guay (*Lévis*), Hogarth, MacEwan, MacGuigan, Knowles (*Winnipeg-North-Centre*), McQuaid, Murphy, Peters, Schumacher, Tolmie, Valade, Woolliams—(16).

De même que: L'honorable John N. Turner; M^{me} MacInnis, député; M. Fortin, député; M. Ritchie, député; M. Duquet, député.

Témoins: Le professeur Alan W. Mewett, de la Faculté de droit de l'Université de Toronto; *Du ministère de la Justice:* M. D. H. Christie, sous-ministre au Solliciteur général adjoint.

Le Comité reprend l'examen du Bill C-150.

Sur la proposition de M. Woolliams,

Il est convenu,—Que l'on rembourse à M. Mewett et à M. Lavigne, dans une mesure raisonnable, leurs frais de déplacement et leurs frais de séjour pendant la période où ils auront à comparaître devant le Comité de la justice et des affaires juridiques aux fins de l'étude du Bill C-150.

Le président présente le professeur Mewett au Comité.

M. Woolliams demande au professeur Mewett de donner son avis sur les aspects techniques et juridiques des articles relatifs à l'homosexualité et à l'avortement.

Le Comité pose au professeur Mewett des questions relatives à sa déclaration.

L'interrogatoire étant terminé, à 11 h. 33 du matin, le Comité lève la séance jusqu'à nouvelle convocation du président.

[Text]

AFTERNOON SITTING
(13)

The Standing Committee on Justice and Legal Affairs met this day at 3.35 p.m., the Chairman, Mr. Tolmie, presiding.

Members present: Messrs. Cantin, Chappell, Deakon, Gervais, Guay (*Lévis*), Hogarth, Jerome, MacGuigan, McQuaid, Murphy, Schumacher, Tolmie, Valade, Woolliams—(14).

Appearing: Honourable John N. Turner, Minister of Justice and Attorney General.

Witnesses: From the Department of Justice: Mr. J. A. Scollin, Q.C., Director, Criminal Law Section; *From the Department of Agriculture:* Mr. W. J. Phillips, Director General, Production Marketing; Mr. S. B. Pratt, Chief, Race Track Betting.

The Committee resumed its consideration of Bill C-150.

The Chairman called Clause 6(1).

Mr. Schumacher moved under Clause 6(1) relating to section 98A(10) and 98A(11) of the said Act that Bill C-150 be amended by striking out lines 1 to 42 on page 17 and the following substituted:

“(10) Where the magistrate

(a) dismisses an appeal under subsection (6), the appellant, or

(b) allows an appeal under subsection (6),

(i) the Attorney General of Canada or counsel instructed by him for the purpose, if the person who took the action or decision that was appealed from to the magistrate is a person mentioned in paragraph (a) of subsection (1) of section 97, or

(ii) the Attorney General or counsel instructed by him for the purpose, in any other case,

[Traduction]

SÉANCE DE L'APRÈS-MIDI
(13)

Le Comité permanent de la justice et des questions juridiques se réunit cet après-midi à 3 h. 35, sous la présidence de M. Tolmie.

Présents: MM. Cantin, Chappell, Deakon, Gervais, Guay (*Lévis*), Hogarth, Jerome, MacGuigan, McQuaid, Murphy, Schumacher, Tolmie, Valade, Woolliams—(14).

A comparu: L'honorable John N. Turner, ministre de la Justice et procureur général.

Témoins: Du ministère de la Justice: M. J. A. Scollin, c.r., directeur de la Section du droit criminel; *Du ministère de l'Agriculture:* M. W. J. Phillips, directeur général, Production et Marchés; M. S. B. Pratt, chef de la Surveillance des paris aux hippodromes.

Le Comité reprend l'examen du Bill C-150.

Le président met en délibération le paragraphe (1) de l'article 6 du Bill.

Au paragraphe (1) de l'article 6 du Bill, M. Schumacher propose, relativement aux paragraphes (10) et (11) de l'article 98A de ladite Loi, que le Bill C-150 soit modifié par le retranchement des lignes 1 à 42, page 17, et leur remplacement par ce qui suit:

(10) Lorsque le magistrat

a) rejette un appel en vertu du paragraphe (6), l'appelant, ou

b) admet un appel en vertu du paragraphe (6),

(i) le procureur général du Canada ou un procureur constitué par lui à cette fin, si la personne qui a pris la mesure ou la décision dont il est fait appel devant le magistrat est une personne mentionnée à l'alinéa a) du paragraphe (1) de l'article 97, ou

(ii) le procureur général ou un procureur constitué par lui à cette fin dans tout autre cas, peuvent inter-

[Text]

may appeal to the appeal court against the dismissal, or against the allowing of the appeal, as the case may be, and the provisions of Part XXIV except section 724 and sections 733 to 742 apply, *mutatis mutandis*, in respect of such an appeal.

(11) In this section,

(a) "appeal court" means

(i) in the Province of Newfoundland, a judge of the Supreme Court,

(ii) in the Provinces of Prince Edward Island, Nova Scotia, New Brunswick, Ontario, Manitoba and British Columbia, the county court of the district or county where the adjudication was made,

(iii) in the Province of Quebec, the Court of Queen's Bench (Crown side),

(iv) in the Province of Alberta, the district court of the judicial district where the adjudication was made,

(v) in the Province of Saskatchewan, the District Court for Saskatchewan, and

(vi) in the Yukon Territory and Northwest Territories, a judge of the Territorial Court; and

(b) "magistrate" means a magistrate having jurisdiction in the territorial division where the applicant for a permit or registration certificate the issue of which has been refused, or the person whose permit or registration certificate has been revoked, as the case may be, resides.'

Motion carried. Clause 6(1) relating to section 98A(10) and 98A(11) carried.

Clause 6 as amended carried.

The Chairman called Clause 13.

Mr. Hogarth moved, on Clause 13,

[Traduction]

jeter appel de cette décision devant la cour d'appel et les dispositions de la Partie XXIV, à l'exception de l'article 724 et des articles 733 à 742 s'appliquent, *mutatis mutandis*, à l'égard de cet appel.

(11) Au présent article,

a) «cour d'appel» désigne

(i) dans la province de Terre-Neuve, un juge de la Cour suprême,

(ii) dans les provinces de l'Île-du-Prince-Édouard, de la Nouvelle-Écosse, du Nouveau-Brunswick, de l'Ontario, du Manitoba et de la Colombie-Britannique, la cour de comté du district ou du comté où le jugement a été prononcé,

(iii) dans la province de Québec, la cour du Banc de la Reine (juridiction criminelle),

(iv) dans la province de l'Alberta, la cour de district du district judiciaire où le jugement a été prononcé,

(v) dans la province de la Saskatchewan, la cour de district de la Saskatchewan, et

(vi) dans le Territoire du Yukon et les Territoires du Nord-Ouest, un juge de la cour territoriale; et

b) «magistrat» désigne un magistrat ayant juridiction dans la circonscription territoriale où réside l'auteur d'une demande de permis ou de certificat d'enregistrement dont l'émission a été refusée, ou la personne dont le permis ou le certificat d'enregistrement a été révoqué, selon le cas.

La motion est adoptée. Les sections du paragraphe (1) de l'article 6 du Bill relatives aux paragraphes (10) et (11) de l'article 98A de la Loi sont adoptées.

L'article 6 modifié du Bill est adopté.

Le président met en délibération l'article 13 du Bill.

Sur l'article 13 du Bill, M. Hogarth propose—

[Text]

That Bill C-150 be amended

(a) by striking out lines 17 and 18 on page 32 and the following substituted:

‘(a) to (g) of subsection (1) or subsection (4) of section 179, otherwise than in relation to a dice game, three-card monte, punch board or coin table, if’ ; and

(b) by striking out lines 24 and 25 on page 33 and the following substituted:

‘graphs (a) to (g) or subsection (1) or subsection (4) of section 179, otherwise than in relation to a dice game, three-card monte, punch board or coin table, if’

Amendment carried.

Mr. Hogarth further moved on Clause 13,

That Bill C-150 be further amended by striking out lines 47 and 48 on page 32 and lines 1 to 11 on page 33 and the following substituted:

‘section (4) of section 179; and’

Amendment carried.

Clause 13 as amended carried.

Clauses 9 and 10 carried.

Clause 12 carried.

Clause 11 was called.

On Clause 11, Mr. Murphy moved,

That Bill C-150 be amended

a) by striking out line 11 on page 29 and the following substituted:

‘pool of each race or each individual feature pool from the total amount’ ; and

b) by striking out lines 35 to 39 on page 30 and the following substituted:

‘(d) the prohibition, restriction or regulation of

(i) the possession of drugs or medications or of equipment used in the ad-

[Traduction]

Que le Bill C-150 soit modifié

a) par le retranchement des lignes 21 et 22, à la page 32, et leur remplacement par ce qui suit:

alinéas a) à g) du paragraphe (1) ou au paragraphe (4) de l'article 179, sauf en ce qui concerne un jeu de dés, de bonneteau, de planche à trous (*punch board*) ou de table à sous, ; et

b) par le retranchement des lignes 32, 33 et 34, à la page 33, et leur remplacement par ce qui suit:

des alinéas a) à g) du paragraphe (1) ou au paragraphe (4) de l'article 179, sauf en ce qui concerne un jeu de dés, de bonneteau, de planche à trous (*punch board*) ou de table à sous, si

La modification est adoptée.

Sur l'article 13 du Bill, M. Hogarth propose ensuite—

Que le Bill C-150 soit modifié par le retranchement des lignes 6 à 19, à la page 33 du Bill, et leur remplacement par ce qui suit:

(4) de l'article 179; et

La modification est adoptée.

L'article 13 modifié du Bill est adopté.

Les articles 9 et 10 du Bill sont adoptés.

L'article 12 du Bill est adopté.

L'article 11 du Bill est mis en délibération.

Sur l'article 11 du Bill, M. Murphy propose—

Que le Bill C-150 soit modifié

a) par l'insertion, après la ligne 12, à la page 29, des mots suivants:

ou pour chaque cagnotte spéciale distincte; et

b) par le retranchement des lignes 38 à 44, à la page 30, et leur remplacement par ce qui suit:

d) l'interdiction, la restriction ou la réglementation

(i) de la possession de drogues ou de médicaments ou de matériel utilisé pour

[Text]

ministering of drugs or medicaments at or near race courses, or

(ii) the administering of drugs or medicaments to horses participating in races run at a race meeting during which a pari-mutuel system of betting is used; and'

Motion carried and Clause 11 as amended carried.

Clause 16 was called

And the debate continuing;

At 5.30 p.m., the Committee adjourned until 9.30 a.m. March 18, 1969.

[Traduction]

administer des drogues ou des médicaments sur des pistes de course ou près des pistes de course, ou

(ii) de l'administration de drogues ou de médicaments à des chevaux qui participent à des courses lors d'une réunion de courses au cours de laquelle est utilisé un système de pari mutuel; et

La motion est adoptée, et l'article 11 modifié du Bill est adopté.

L'article 16 du Bill est mis en délibération,

Et, le débat se poursuivant,

A 5 h. 30 de l'après-midi, le Comité s'ajourne jusqu'au 18 mars 1969, à 9 h. 30 du matin.

Le secrétaire du Comité,

R. V. Virr,

Clerk of the Committee.

[Texte]

EVIDENCE

(Recorded by Electronic Apparatus)

Thursday, March 13, 1969

●0938

The Chairman: Gentlemen, we have a quorum. Before starting I think we should have a motion that Professor Mewett be reimbursed for reasonable travelling and living expenses.

Mr. Woolliams: Thank you very much, Mr. Chairman. I have a motion drafted by the Clerk to cover the two witnesses, one that Mr. Valade will be calling. I move that:

Professor Mewett and Dr. Lavigne be reimbursed for reasonable travelling and living expenses incurred during their appearance before the Justice and Legal Affairs Committee.

Motion agreed to.

Mr. Hogarth: Mr. Chairman, before we proceed this morning may I raise a question of privilege. At the last sitting we had referred to us the case of *R. v. Talbot* as an authority for the proposition that the burden of proof is upon an accused in dealing with this firearm section to establish that he had a registration certificate or permit, as the case may be. That was put forward as excusing the deletion of Section 92 as it now is in the Criminal Code. I had not had an opportunity to read that case before we came to the Committee and since the last sittings I have looked at the case and several others and I find that the ratio of that case as it is set out in *Cranshaw* in the supplement at page 312 is that a person holding a licence under Section 3 of the Opium and Narcotic Drug Act may be guilty of an offence of trafficking or conspiracy to traffic because a licence does not authorize offences nor exclude liability therefor, and it does not appear to me that the actual ratio of the case has much to do with the proposition with which we are concerned, although certainly it was given extensive consideration in the subordinate reasons by the majority of the court.

[Interprétation]

TÉMOIGNAGES

(Enregistrement électronique)

Le jeudi 13 mars 1969

Le président: Messieurs nous avons quorum. Avant de commencer, nous devrions présenter une motion proposant que les frais de voyage et de séjour du professeur Mewett lui soient remboursés.

M. Woolliams: Merci beaucoup, monsieur le président. J'ai une motion, rédigée par le Greffier, laquelle couvre les deux témoins, et une autre voulant que M. Valade se présente devant le comité. Je propose que:

Les frais de voyage et de séjour du professeur Mewett et de M. Lavigne, occasionnés durant leur comparution devant le Comité de la Justice et des affaires juridiques leur soient remboursés.

La motion est approuvée.

M. Hogarth: Monsieur le président, avant de reprendre les travaux, j'aimerais soulever, ce matin, une question de privilège. Lors de notre dernière réunion, on nous a soumis le cas de la Couronne contre Talbot pour démontrer que le fardeau de la preuve (pour ce qui est de l'article relatif aux armes à feu) repose sur l'accusé qui doit prouver qu'il avait un certificat ou permis d'enregistrement, selon le cas. C'était la raison pour justifier la suppression de l'article 92 comme il apparaît présentement dans le Code criminel. Je n'avais pas eu l'occasion de lire les dossiers de cette affaire avant de nous réunir en comité, et depuis les dernières séances, j'ai étudié ce cas ainsi que d'autres et je constate que ce cas, tel qu'il est expliqué dans le supplément du *Cranshaw*, à la page 312, prévoit qu'une personne, en vertu de l'article 3 de la Loi sur l'opium et les drogues narcotiques, peut être coupable de trafic de drogues ou de tentative de trafic de drogues parce que le fait de posséder un permis ne justifie l'infraction ni n'exclut la responsabilité d'un tel acte; d'autre part, il ne me semble pas évident que la raison actuelle de ce cas soit trop liée à la proposition qui nous intéresse, bien qu'elle fût l'objet d'une étude approfondie dans les raisons secondaires avancées par la majorité des juges.

[Text]

Mr. Chairman, I am very much concerned that this case, although it may apply, will not strictly apply to prosecutions under proposed section 91 and the other sections that we are creating here with respect to permits and cer-

• 0940

tificates. Each case is different and I would like to refer specifically to another case, *R. v. Staviss* in which it was held that where the exception or proviso is the substance of the offence, the Crown must prove same. I particularly refer to the notations under Section 702 of the Criminal Code in *Trémear's Annotated Criminal Code* and *Cranshaw*.

In section 91 that we are creating, the whole gist of the offence is that the accused possessed an unregistered weapon or an unregistered restricted weapon. That is the whole gist of the offence and it is not that he possessed a restricted weapon but one without a certificate. The Crown must prove that beyond a reasonable doubt and, with the greatest respect, I cannot see how the *Talbot* case can be an authority for the proposition that if the Crown does not have to prove it the onus switches to the accused. If the accused is found in possession of a restricted weapon and he wishes to raise any of the exceptions that are set forth in proposed Section 91 (2) of the act, then he has to prove them, there is no doubt about that, but it seems to me that in the first instance the whole burden is on the Crown to prove that that weapon was an unregistered weapon.

The suggestion is that knowledge of the certificate is peculiar to the accused. With the greatest respect, I think that when we provide in the first instance that the weapon is registered by a serial number that the knowledge is not peculiar to the accused. In addition to that, I become very concerned over a judge charging a jury on that particular aspect of the law when he is prohibited from commenting on the failure of the accused to testify.

There are many analogous situations that I do not think I have to bring up today, such as driving while prohibited, and so on, but it is my respectful suggestion that at some time we should go back—and I leave it to the Steering Committee—and review the situation we are in with respect to the deletion of proposed Section 92, which put the onus of proof upon the accused.

The Chairman: Thank you, Mr. Hogarth. I do not feel that this is a proper question of

[Interpretation]

Monsieur le président, bien que ce cas soit applicable, j'ai bien peur qu'il ne s'applique pas strictement aux poursuites en vertu du nouvel article 91 et des autres articles que nous aurons approuvés ici en ce qui concerne

la délivrance des permis. Chaque cas est différent, qu'il me soit permis de citer un autre cas, *Régina vs Staviss*, dans lequel on avait décidé que le cas où l'exception ou la condition constitue la substance du délit, c'est à la Couronne de le prouver. Je songe ici plus particulièrement aux annotations sous les articles 702 du Code criminel «*Trémear's Annotated Criminal Code*» et dans «*Cranshaw*».

Dans l'article 91 que nous devons approuver, l'essence du délit est constitué par le fait que l'accusé possédait une arme non enregistrée ou une arme à usage restreint non enregistrée. C'est là le fait essentiel du délit et ce n'est pas le fait qu'il possédait une arme à usage restreint, mais une arme sans permis. La Couronne doit établir la preuve raisonnable du délit, et sauf votre respect, je ne pense pas qu'on puisse s'appuyer sur le cas *Talbot* pour dire que la Couronne n'a pas à faire la preuve, que cette responsabilité retombe sur l'accusé. Si celui-ci est arrêté en possession d'une arme à autorisation restreinte et qu'il veut se prévaloir des exceptions indiquées à l'article 91 (2) de la Loi, il doit en faire la preuve sans aucun doute possible. Mais il est certain que dans le premier cas, le fardeau de la preuve retombe sur la Couronne; c'est à la Couronne de prouver que l'arme n'a pas été enregistrée.

On a prétendu que c'est l'accusé seul qui saurait si l'arme est immatriculée ou pas. Mais, en toute déférence, lorsque nous prévoyons que l'arme soit immatriculée par son numéro de série, cette connaissance n'appartient pas à l'accusé seul. En outre, je n'aimerais pas qu'un juge, qui n'a pas le droit de faire des observations sur le fait que l'accusé n'a pas témoigné, puisse ainsi s'adresser au jury au sujet de cet aspect de la Loi.

Il y a beaucoup de situations analogues que je vous épargnerai, mais qu'il me soit permis, en toute déférence, de dire que nous devrions revoir la situation dans laquelle nous nous trouvons en ce qui concerne la disparition de l'article 92, ce qui fait retomber le fardeau de la preuve sur l'accusé.

Le président: Merci. Je ne pense pas que ce soit vraiment une question de privilège. Il

[Texte]

privilege. There is no notice given and there is no formal motion; it is in the form of a statement explaining your position if such is accepted. I think that when we revert back to the clause-by-clause study that this matter could be dealt with.

Mr. Hogarth: Thank you, sir.

The Chairman: I would like to bring to the attention of the Committee once again the problem the transcribers are having with this Committee. I feel that perhaps this is my responsibility. There is a lot of cross exchange and a lot of interjections. This is understandable because there are 19 or 20 lawyers here.

It is done in a very informal manner and it makes it almost impossible for these people to transcribe our words properly, so I again exhort you that if you have any questions to get my recognition, I will call your name, you can then speak and then the witness can speak. As I say, if we do not do it this way we are not going to get a proper record. It is not only bad for the people who are doing the transcribing and editing but it is bad for us because we are not going to get an accurate account of what we say. So, again I exhort all of you to try to adhere to that principle and I ask that there be no interjections, if possible. Thank you.

Mr. Woolliams: Mr. Chairman, may I make a suggestion in that regard. I realize that our proceedings are being taped, and although all of us are known to each other we are not known when we get on the tape, so if we could just say, "It is Brown speaking" and then go on to say what we wish to say it would be helpful. I think even in the case of an interjection it would then be much easier to transcribe.

The Chairman: That would be helpful, but I think the best possible way of doing it would be to adhere to the proper procedure, that is, to address the Chairman, get his attention and then he will recognize you. When we have these interjections it makes it almost impossible for the transcribing people to do a proper job. Another point which the Clerk has brought to my attention is that the console operator must turn on the speaker's microphone and he just does not have the time to do this.

We have before us this morning Professor Mewett of the Faculty of Law of the University of Toronto. I think perhaps I should remind the Committee that we have agreed to hear a maximum of six witnesses and these

[Interprétation]

n'en avait pas donné avis et il n'y a pas de motion dans les formes, et si je ne m'abuse, il s'agissait d'une déclaration expliquant votre position à ce sujet. Lorsque nous en serons à l'examen du Bill, article par article, nous pourrions y revenir.

M. Hogarth: Merci beaucoup.

Le président: Je signale une fois de plus au Comité le problème des gens qui transcrivent les débats. Ce qui se passe, c'est qu'il y a beaucoup d'échanges, beaucoup d'interjections, ce qui est parfaitement compréhensible car il y a ici 19 ou 20 juristes.

Nos délibérations se font sans formalités, mais il est extrêmement difficile, dans ces conditions, de retranscrire convenablement nos débats. Si vous avez des questions à poser, obtenez d'abord l'autorisation du président. Je vous nommerai et vous pourrez parler ensuite. Si nous n'agissons pas de cette façon, nous n'aurons pas un compte rendu aussi fidèle. Non seulement c'est difficile pour ceux qui font la transcription et l'édition, mais c'est mauvais pour nous, car nous voulons malgré tout que l'on transcrive exactement nos propos. Je vous demande donc encore une fois, de collaborer avec moi pour qu'il règne un certain ordre au comité, qu'il n'y ait pas d'interjections qui seraient impossibles de transcrire. Merci.

M. Woolliams: Je sais que nos débats sont enregistrés, et bien que nous nous connaissons tous, on ne nous connaît pas lorsque nous passons sur bande. Il faudrait donc se nommer avant de parler, de dire, par exemple, «C'est Dupont qui parle», et ensuite dire ce que nous avons à dire. Il serait beaucoup plus facile ainsi, même pour les interjections, de distinguer nos voix pour transcrire le compte rendu.

Le président: Ce serait utile, mais je pense que le mieux, malgré tout, ce serait de suivre la procédure établie, de demander la permission au président avant de parler, et attendre que cette permission soit accordée. Autrement, nous compliquons énormément la tâche de ceux qui ont à transcrire nos délibérations. On m'a signalé aussi que l'opératrice doit ouvrir les microphones, il faudrait donc lui donner le temps de le faire.

Ce matin, donc, nous avons ici le professeur Mewett de la faculté de Droit de l'Université de Toronto.

Je dois rappeler au Comité que nous nous sommes mis d'accord pour ne pas entendre

[Text]

witnesses will be confined in giving their evidence to the technical and, in certain cases, legal aspects of the bill. The witnesses will

• 0945

not get into the substantive questions which are involved or give their opinions one way or another. I think this is most important because if we stray from this edict I think this Committee will be in trouble because other organizations and other individuals will want to appear. We must adhere to this principle and I am sure that Professor Mewett will do this. Professor Mewett.

Mr. Woolliams: Before you start, Mr. Chairman, if I might be recognized. I am Eldon Woolliams. I agree with you and that is the reason we have called Professor Mewett today. Professor Mewett, so that his qualifications are before the Committee, is a member of the Ontario Bar; he is a professor at the University of Toronto; he teaches criminal law and evidence and he is the editor of the *Criminal Law Quarterly*.

I will endeavour—as I am sure will the other members who are working with my group—to adhere to your direction on the technical aspects of the bill. I have had a discussion with Professor Mewett on this.

I have received certain material from the Emergency Organization for the Defence of Unborn Children. I am not saying this is my position but I feel some responsibility because 70,000 names have been collected across the country by Mrs. Olive Heron, who has forwarded this to me as one of the Opposition members and as a member of this Committee. There are 68 letters in opposition by the Aid-U Stenographic Services, 12 Richmond Street East, Toronto, Ontario. However, I will endeavour to raise that phase of it after we have dealt with Professor Mewett. If anybody is interested in having a look at this material that has been forwarded to me, it is here for inspection. I hope I can file it with the Committee at the proper time.

Professor Mewett did not prepare—and I think we can do it faster this way—a brief, but I am going to ask, with the consent of the Committee and by your direction, sir, that we start on page 24 and deal with proposed Section 149A in reference to indecent acts and homosexuality.

I will ask Professor Mewett, without any further questioning from me on that section, what his recommendations are with respect to the legal ramifications and the wording of the section, or if he has any recommendations he

[Interpretation]

plus de 6 témoins. Ces témoins témoigneront seulement en ce qui concerne les aspects techniques et, dans certains cas, les aspects juri-

diques du projet de loi. Le témoin n'aura pas à donner son opinion pour ou contre les questions fondamentales en cause. Si nous ne nousastreignons pas à une certaine discipline et si nous ne respectons pas ce principe, nous serons alors saisis d'un nombre infini de demandes de toutes sortes d'organisations qui voudront témoigner. Nous nous en tiendrons donc à un principe et je suis certain que le professeur Mewett le fera. Professeur Mewett.

M. Woolliams: Avant de commencer, monsieur le président, je voudrais la parole, je m'appelle Eldon Woolliams. Je suis de votre avis et c'est pourquoi d'ailleurs nous avons convoqué aujourd'hui le professeur Mewett. Le Comité connaît ses titres et qualités. Il est membre du Barreau de l'Ontario, professeur à la Faculté de Droit à l'université de Toronto où il enseigne le droit criminel et les preuves à apporter, et il est éditeur du *Criminal Law Quarterly*.

Je m'efforcerais, ainsi que tous les membres de mon groupe, de m'en tenir à votre directive en ce qui concerne les aspects techniques du projet de loi. J'en ai parlé avec le professeur. J'ai reçu, de l'organisation pour la défense des enfants qui ne sont pas encore nés, une pétition signée par 74,000 personnes. Je le mentionne, non pas qu'elle représente mon opinion, mais ces signatures ont été recueillies par M^{me} Olive Heron qui m'a envoyé cette pétition en tant que membre de l'opposition et membre de ce Comité. Nous avons également 68 lettres qui s'y opposent de la part de Aid-U Stenographic Services, de Toronto. Mais je soulèverai cette question tout à l'heure lorsque nous aurons fini d'interroger le professeur. Ceux qui sont intéressés pourront consulter ce document qui m'a été envoyé. Je le verserai au dossier du comité en temps voulu.

Le professeur Mewett n'a pas préparé de mémoire, ce qui nous permettra de procéder plus rapidement. Je vais demander au Comité, si vous me le permettez, monsieur le président, que nous commencions à la page 24 pour étudier l'article 149 a) relatif aux actes indécents et à l'homosexualité.

Je demande donc tout de suite au professeur, sans l'interroger davantage, quelles sont ses recommandations en ce qui concerne les aspects juridiques et le texte même de l'article, ou s'il a des recommandations à faire au

[Texte]

might wish to make to the Committee as to changes or how it really, in fact and in law, affects the Criminal Code in reference to these matters. Following that we will go into the sections on abortion. I am going to deal with pages 24, 34, 35, 42 and 44.

The Chairman: Professor Mewett.

Professor Alan W. Mewett (Faculty of Law, University of Toronto): Mr. Chairman, as far as proposed Section 149A of Clause 7 of the Act, which appears on page 24, is concerned I do not think there has been a prosecution in Canada for buggery between consenting adults in private since the revision in 1953. My view is that it is desirable that the Criminal Code conform with actual practice and therefore, generally speaking, I am in favour of Clause 7.

There is only one point I would like to raise, and it is a legal point. It is factually impossible for two consenting adults to commit bestiality and Clause 7 purports to say that Section 147—that is, everyone who commits bestiality—does not apply to any act committed in private between a husband and wife or any two persons. I am not quite sure what that means but in my opinion, Mr. Chairman, it does not mean anything. As it stands I think it would mean that if one person committed a sexual act with his dog he would be guilty of an indictable offence and liable to imprisonment for 14 years. If two people did it they would not be guilty of any offence. If three people did it they would be guilty and liable to imprisonment for 14 years. I find that very difficult to follow. I would have thought, if one is concerned with the peculiarity of the act, that it is much more peculiar between two people than between one.

I think there has only been two convictions for bestiality in the past 20 years. I would

• 0950

suggest to the Committee that perhaps the more sensible thing would be to amend Section 147 by deleting the words “or bestiality”, so that Section 147 would then read, “Everyone who commits buggery is guilty of an indictable offence”. Bestiality in fact is not—at least in my opinion—a fit subject for the Criminal Code. I think it is much more likely that such a person would be sick and in need of mental treatment, and there are adequate provisions in the Criminal Code covering cruelty to animals in appropriate cases.

All I would suggest at the moment is that as Clause 7 stands, grammatically it does not

[Interprétation]

Comité au sujet des changements et comment, en fait, cet article modifie le Code criminel à ce sujet. Après quoi nous parlerons des articles sur l'avortement. Nous parlerons donc des pages, 24, 34, 35, 42 et 44.

Le président: Professeur Mewett.

Professeur Alan W. Mewett (Faculté de Droit, Université de Toronto): Monsieur le président, en ce qui concerne l'article 149(A) du Bill relatif à l'article 7 de la Loi, à la page 24, je ne pense pas qu'il y ait eu de poursuites engagées pour des actes de sodomie en privé entre adultes consentants depuis la révision de 1953. Pour moi, il serait souhaitable que le Code criminel soit conforme à la pratique actuelle, et je suis donc, en générale, assez favorable à l'article 7.

Toutefois, il y a une question juridique que je voudrais soulever. Il est absolument impossible en fait pour des adultes consentants de se rendre coupables de bestialité et l'article 7 dit en fait que l'article 147 de la Loi, c'est-à-dire, ceux qui commettent un acte de bestialité, ne s'applique pas aux actes commis en privé entre le mari et son épouse, ou deux personnes quelconques. Je ne sais pas très bien ce que cela veut dire, mais pour moi cela ne veut rien dire du tout. Si j'ai bien compris, cela veut dire que si une personne commettait un acte sexuel avec un chien, par exemple, elle serait coupable d'un crime passible d'une peine de 14 années. Et si deux personnes en faisaient autant, elles ne seraient pas coupables du tout, tandis que si trois personnes le font elles sont passibles de 14 ans de prison. La Loi est assez curieuse. La chose est encore plus curieuse lorsqu'elle se passe entre deux personnes que lorsqu'elle ne met en cause qu'une personne.

Il n'y a eu que deux condamnations pour bestialité au cours des vingt dernières années

en autant que je sache. Il me semble qu'il serait peut-être plus raisonnable de modifier l'article 147 en supprimant les mots «ou la bestialité» de sorte que l'article se lirait ainsi «est coupable d'un acte criminel... quiconque commet la sodomie». La bestialité en fait n'est pas, à mon avis, quelque chose qui devrait tomber sous le coup du Code criminel. Il serait beaucoup plus probable que la personne en cause soit un malade susceptible d'un traitement psychiatrique, et le Code criminel renferme des dispositions adéquates quant à la cruauté envers les animaux.

Tout ce que je proposerais en ce moment, c'est qu'au terme de l'article 7, du point de

[Text]

make sense and that the only way to make it make sense I think would be to delete the phrase "or bestiality" when you are dealing with husband and wife or any two persons. That is all I have to say, Mr. Chairman, on 149A. I think more importantly the abortion questions which...

Mr. Woolliams: Just one moment, Professor. There may be some other members of the Committee who would like to ask you some questions on this.

Mr. Valade: I would like to know what you think, sir, of 149A (2)(ii) in which those persons who are exempted from the criminal procedures—I will read it

(ii) if that person is, and the other party to the commission of the act knows or has good reason to believe that that person is feeble-minded, insane, or an idiot or imbecile.

I do not know why we do not include in this—and I would like to have your opinion—those who are actually detained in prison. I think there is a contradiction of the law there in that if we legalize this part there is no procedure that can be involved and then it is left to internal discipline and we do not know how this can be dealt with within the prisons. I think it may be left to the individual prison's disciplinary decision. What is your opinion of this, Professor? I am quite vague on this but I would like to have your comments.

Professor Mewett: Is the difficulty which you refer to not covered by 149A.(2)(b)(i)?

if the consent is extorted by threats or fear of bodily harm...

I think a great deal of the difficulty in prison is not the consenting homosexual acts but the forced homosexual acts.

I do not think that it is true to say that the Criminal Code does not apply to prison inmates. I think it does as a question of law. As a question of practice, of course, it usually is treated as internal discipline. Nevertheless I would assume that if this proposed section is passed the internal discipline of the penitentiaries and reform institutions would conform to the amended Criminal Code, so that certainly homosexual acts forced on someone else would continue to be a disciplinary offence. Whether or not homosexual acts between consenting inmates of prisons would continue to be a disciplinary offence, even though it is not a Criminal Code offence, I think would be entirely up to the Commissioner of Penitentiaries or the regulations made under the Penitentiary Act as to wheth-

[Interpretation]

vue grammatical, il ne veut pas dire grand chose. La seule façon d'agir ce serait de faire disparaître les mots «ou bestialité» lorsqu'il s'agit d'un mari et de sa femme ou entre deux personnes, en ce qui concerne 149(a). Je pense que les questions d'avortement sont plus importantes.

M. Woolliams: Un moment professeur, peut-être que d'autres membres du comité aimeraient vous poser des questions à ce sujet?

M. Valade: Je voudrais que vous me disiez ce que vous pensez de 149 A, sous-alinéa 2(ii) vis-à-vis des personnes qui sont exemptes des procédures criminelles, et je cite:

si cette personne est simple d'esprit aliénée, idiote ou imbécile et si l'autre partie qui commet l'acte le sait ou a de bonnes raisons de le croire.

Pourquoi inclure ici, et je parle ici des personnes qui sont détenues en prison? Il me semble qu'il y a une contradiction dans la Loi? Si au terme de la Loi nous autorisons ce genre de chose peut-être laisserons-nous aux autorités des prisons le soin d'exercer des mesures disciplinaires qui s'imposent. Ce ne sera pas prévu par la Loi, mais nous nous en mettrions aux gardiens de prisons?

M. Mewett: Est-ce que ce n'est pas visé par B (1).

Si le consentement est extorqué par la menace ou la peur de lésions corporelles.

Je pense que ce que nous voulons savoir ici, c'est si l'acte homosexuel a été consenti ou s'il a été extorqué.

Je ne crois pas qu'il soit vrai de dire que le Code criminel ne s'applique pas aux détenus. Je pense que l'on peut l'appliquer juridiquement parlant. Évidemment, en pratique, cela fait l'objet de certaines sanctions disciplinaires. Néanmoins, si l'on adoptait l'article, les sanctions disciplinaires internes des pénitenciers et des maisons de correction seraient conformées au nouveau Code criminel de sorte que les actes homosexuels imposés à quelqu'un d'autre constitueraient toujours un délit punissable. Que les actes homosexuels entre des détenus consentants continuent ou non d'être un délit punissable, même si cela ne constitue pas une infraction au Code criminel, c'est aux Commissaires des pénitenciers ou aux règlements établis en vertu de la Loi sur les pénitenciers de décider si cela est

[Texte]

er this is necessary in order to enforce discipline. I do not think merely amending the Criminal Code in this way necessarily means that therefore consenting homosexual acts inside penitentiaries are also going to be tolerated by the Commissioner.

Mr. Valade: My point, Professor, is that I do not believe that young inmates would accuse other inmates, their confrères in the same cell, of having used pressure or forced them into that act. This is the difficulty that arises.

Professor Mewett: Yes. But that is the situation now. All I can say is that I do not think that this amendment makes prison conditions any worse. Prison conditions are already intolerable but this amendment is not going to worsen that situation in the internal organization of the penitentiaries.

Mr. Valade: If this proposed section is passed—I hope it is not—should there not be a provision to deal with the very serious, critical problem of homosexuality in prisons?

Professor Mewett: I do not see how you could legislate it, though. If you have a phrase that says

if the consent is extorted by threats or fear of bodily harm...

which also would apply inside the prison, there is not any way of enforcing that unless it is with the co-operation of the prison inmates.

The Chairman: Any further questions on this section?

Mr. Woolliams: Yes. I was interested in this technical point you have raised because clause 7, of course, deals with—and it might be well to read the whole Section in its brief

“147. Every one who commits buggery or bestiality is guilty of an indictable offence and is liable to imprisonment for fourteen years”

and you have raised the question that bestiality should be removed from Section 147 because it is not applicable.

Professor Mewett: It is not applicable in the circumstances of the amendment which refers to two people.

Mr. Woolliams: I wonder at this stage, Mr. Chairman, if the department, maybe the Minister or one of his officials, would care to comment on that before we consider, at a

[Interprétation]

nécessaire afin d'assurer et de maintenir la discipline. Je ne crois pas que l'amendement simple du Code criminel amènera nécessairement le Commissaire à tolérer les actes homosexuels consentis.

M. Valade: Ce que je veux dire, Monsieur Mewett, c'est que je doute fort que des jeunes détenus accuseraient d'autres détenus ou leurs confrères de la même cellule d'avoir utilisé de la pression ou d'avoir extorqué leur consentement. Voilà le problème qui se pose.

M. Mewett: Oui. Mais c'est ce qui se passe actuellement. Tout ce que je peux dire c'est qu'à mon avis cet amendement ne peut aggraver la situation dans les prisons qui de toute façon est déjà intolérable. Mais l'amendement ne va pas aggraver la situation en ce qui concerne l'organisation interne du pénitencier.

M. Valade: Si cet article est adopté, j'espère qu'il ne le sera pas, ne devrait-il pas y avoir des dispositions en vue de faire face au sérieux problème de l'homosexualité dans les prisons?

M. Mewett: Je ne vois pas comment on pourrait procéder légalement. Si vous avez une phrase qui se lit comme suit, et je cite: «si le consentement est extorqué par la menace ou par la peur de lésions corporelles,» qui serait applicable à l'intérieur des pénitenciers, je ne vois aucun moyen d'appliquer cela sans la collaboration des détenus.

Le président: Est-ce qu'il ya d'autres questions sur cet article-là?

M. Woolliams: Oui. Le point de vue technique que vous avez soulevé m'intéresse. L'article 7, bien entendu, porte sur—peut-être ferais-je mieux de lire tout l'article qui dit, et je cite:

147—Est coupable de délit et passible d'emprisonnement de quatorze ans, toute personne qui commet un acte de sodomie ou de bestialité.

Selon vous, il faudrait éliminer le terme «bestialité» de l'article 147, car il ne s'applique pas ici.

M. Mewett: Il ne s'applique pas ici lorsqu'il s'agit de deux personnes.

M. Woolliams: A ce stade-ci, je me demande, monsieur le président, si le Ministre, ou un de ses fonctionnaires voudrait bien dire ce qu'ils en pensent, avant que nous

[Text]

later stage, moving an amendment in this regard. Maybe there is some explanation which the Professor would be able to answer.

Mr. D. H. Christie (Assistant Deputy Attorney General): Mr. Woolliams, my instructions are that we are to hear the Professor make his representation and then we will consider and deal with the points that he has raised in due course.

Mr. Woolliams: I think that is very fair. Thank you.

Mr. MacGuigan: Professor Mewett, assuming that the Committee were not to follow your recommendation about removing "bestiality" from Section 147, would you have any other suggestion as to how Clause 7 could be changed in order to take care of this problem of illogic which you have drawn to our attention?

Professor Mewett: No. It would mean redrafting Section 147 into two different sections—147 and 147A, 147 dealing with buggery and 147A dealing with bestiality, and then the amendment saying Section 147 does not apply to... It could be done that way.

Mr. Hogarth: The action of bestiality should not be an offence.

Professor Mewett: Actually it was.

Mr. Hogarth: Do you think that people should be allowed to perform acts of bestiality in public?

Professor Mewett: No, I do not.

Mr. Hogarth: Then we would have to make it an offence.

Professor Mewett: That is right.

Mr. Hogarth: Thank you.

Mr. Woolliams: Mr. Chairman, does he go so far as to think that it should be permitted to perform bestiality in private?

Professor Mewett: I think if it is known—I do not know but if I were a doctor I would immediately suspect that that was grounds for a psychiatric examination.

Mr. Woolliams: Is this not then a matter that might have been placed in another act where, rather than trying to legislate from the moral point of view under the Criminal Code, we should be stressing health and psychiatric and psychological treatment?

[Interpretation]

envisagions de proposer un amendement à cet égard. Il ya peut-être sujet que le professeur pourrait commenter?

M. D. H. Christie (sous-procureur adjoint): Monsieur Woolliams, selon les instructions que j'ai reçues, nous sommes censés écouter l'exposé de M. Mewett, puis nous répondrons aux différents points qu'ils aura pu faire valoir.

M. Woolliams: Cela me semble raisonnable, merci.

M. MacGuigan: Monsieur Mewett: supposons que le Comité ne veuille pas éliminer de l'article 147, le mot «bestialité», comme vous le proposez, avez-vous une autre idée qui nous permettrait de modifier l'article 7 du bill afin de régler le problème auquel vous avez attiré notre attention?

M. Mewett: Non, je ne vois pas très bien. Il faudrait alors rédiger deux articles 147 et 147a, 147 aurait trait à la sodomie et l'autre à la bestialité; et puis l'amendement, indiquant que l'article 147 ne s'applique pas à... C'est ainsi qu'on pourrait procéder.

M. Hogarth: Mais la bestialité ne devrait pas être déniée, n'est-ce-pas?

M. Mewett: Mais c'est pourtant le cas.

M. Hogarth: Est-ce que vous pensez qu'on a le droit de commettre des actes de bestialité en public?

M. Mewett: Non.

M. Hogarth: Il faut donc que nous en fassions un délit?

M. Mewett: C'est exact, vous avez raison.

M. Hogarth: Merci.

M. Woolliams: Monsieur le président, est-ce qu'il irait jusqu'à penser que l'on devrait permettre des actes de bestialité en privé?

M. Mewett: Je crois que si l'acte est connu, je ne sais au juste, mais si j'étais médecin, j'aurais immédiatement conclu à la nécessité de faire passer à la personne en cause, un examen psychiatrique.

M. Woolliams: N'est-ce pas là un sujet qui aurait dû faire l'objet d'une autre loi où plutôt que de légiférer du point de vue moral, en vertu du Code criminel, nous devrions insister sur le côté médical de la question et prescrire un traitement psychiatrique et psychologique?

[Texte]

Professor Mewett: Well, as I say, sir, I think there have only been two cases of bestiality in Canada that I know of and they were both up in the Yukon.

Mr. Woolliams: As one famous judge in Alberta said when a fellow was charged with doing some abnormal act with a pig, he said pigs do not squeal.

The Chairman: Any further questions on this subject?

Mr. Valade: I would like to ask the witness if a "public place" includes the private clubs that are licensed under provincial licence as not being private places.

Professor Mewett: I think 149A (2)(a)

an act shall be deemed not to have been committed in private if it is committed in a public place, or if more than two persons take part or are present;

I think in practice what is going to be important is not the public place or the private place aspect but whether more than two people are present. It really would not matter whether you considered a private club to be a public place or not if there were more than two people. You would then be under paragraph (2). But I think a private club would unquestionably be covered by this clause.

The Chairman: Any further questions on this particular clause? We can proceed.

Mr. Woolliams: Mr. Chairman, referring to pages 34, 35, 42, 43 and 44 in reference to abortion, would the Professor let us have his views, from his legal and technical knowledge, on the whole legal position as he sees it?

Professor Mewett: Mr. Chairman, I think the problem really is that the difficulty is in understanding what the present law is, because one cannot really understand the proposed amendments unless one understands the present situation, and it is unquestionably true that there is serious trouble in deciding what the present law is because there have not been any cases since the 1953 amendment of the Code dealing with the type of situation envisaged by the amendments to the Code, that is the so-called, if I may use the phrase, therapeutic abortion, meaning abortion to save the life or perhaps the health of the mother.

[Interprétation]

M. Mewett: C'est comme je disais, je crois qu'il n'y a eu que deux cas connus de bestialité au Canada, et tous les deux ont eu lieu dans le Yukon.

M. Woolliams: Cela me rappelle les propos d'un juge bien connu en Alberta qui disait qu'un type accusé d'avoir commis un acte de bestialité avec un cochon, avait répondu: «Les cochons ne sont pas rapporteurs».

Le président: Y a-t-il d'autres questions sur ce sujet?

M. Valade: Quand on parle d'un endroit public, cela comprend-il les clubs privés qui détiennent un permis provincial selon lequel ils ne sont pas considérés comme clubs privés?

M. Mewett: Je crois que l'alinéa a) du paragraphe (2) de l'article 149A dit, et je cite:

Un acte est réputé ne pas avoir été commis dans l'intimité s'il est commis dans un lieu public ou si plus de deux personnes y prennent part ou y assistent.

J'ai l'impression que dans la pratique, ce qui est important ici ce n'est pas l'endroit, public ou privé, mais plutôt si plus de deux personnes sont présentes. Peu importe que l'endroit soit un club privé ou pas, l'essentiel c'est qu'il y avait plus de deux personnes présentes. Ce serait alors assujéti au paragraphe (2). Mais je pense qu'un club privé serait sans aucun doute compris dans cet article.

Le président: Y a-t-il d'autres questions sur cet article? Nous pouvons continuer.

M. Woolliams: Monsieur le président, en ce qui concerne les pages 34, 35, 42, 43 et 44 sur l'avortement, monsieur Mewett pourrait-il nous exposer ses opinions, étant donné ses connaissances juridiques et techniques, sur tout le côté juridique tel qu'il le conçoit?

M. Mewett: La difficulté réside dans le fait que la loi actuelle est difficile à interpréter, car on ne peut vraiment pas comprendre les amendements envisagés à moins que l'on comprenne la situation actuelle, et il est indéniable qu'il est difficile de décider ce qu'est la loi sous sa forme actuelle, étant donné qu'il n'y a eu aucun autre cas depuis les amendements en 1954, du code, se rapportant au genre de situation envisagée par les amendements au code, du soi-disant avortement thérapeutique, c'est-à-dire l'avortement destiné à sauver la vie ou la santé de la mère.

[Text]

The difficulty is that in the 1953 amendment, in Section 237, the word "unlawfully" was left out. In the 1927 revision the word "unlawfully" was included in Section 237, and so naturally the question that arises is what is the effect of omitting the word "unlawfully" in Section 237, dealing with procuring a miscarriage.

There are two views on it, and one is that omitting the word "unlawfully" means that Section 237 is an absolute offence. That is, a doctor or any person is guilty of a criminal offence under any circumstance of procuring a miscarriage.

Now there is not any doubt in my mind that this is not what was intended in 1953 at any rate, because this very point was raised by Mr. Knowles who asked the Minister of Justice, who was then Mr. Gibson:

Is the Minister satisfied that a doctor who performs such an operation for the purpose of saving the life of the mother is covered...

and this is from Hansard in 1954. The reply of the Minister of Justice was:

Yes, I am sure he would be because there would be no *mens rea* in a case of that sort, and in all these cases without it being specifically mentioned in each section, it is necessary for the crown as part of its case to prove a guilty mind... I am sure my honourable friend would agree that it is very desirable that when that guilty mind is present, in the case of the doctor, he should be held to account criminally.

This view has been adopted at least by the medical profession in Ontario, and at the moment in Ontario there are provisions even now for a therapeutic abortion, and the regulations made under The Public Hospitals Act of 1960, Regulation 46, reads in part:

(1) When a patient in the ante-menopausal period is in a condition,...(c) where a therapeutic abortion is indicated;...the surgeon shall notify a member of the active medical staff...who is not the anaesthetist for the operation, who shall examine the patient before any operation is undertaken and shall make and sign a record of his findings on the examination,...

And then the therapeutic abortion can take place.

Now the medical profession in Ontario, whatever the law is, has unquestionably been

[Interpretation]

La difficulté vient de ce que dans les amendements de l'article 237, en 1953, les mots «illégalement ou illicitement» ont été mis de côté. Dans la révision de 1927, le mot «illicitement» avait été ajouté à l'article 237, et évidemment la question qui se pose est de savoir les conséquences d'avoir omis le terme «illicitement» de l'article 237 qui porte sur l'avortement provoqué. Il y a ici deux façons de voir les choses, et l'une d'elles veut que le fait d'avoir éliminé le terme «illicitement», veut dire que l'article 237 vise le délit en bonne et due forme, c'est-à-dire que le médecin ou toute autre personne est invariablement coupable de crime s'il provoque un avortement.

Or, je suis absolument certain que ce n'était pas là l'intention que l'on avait en 1953, car ce même point a été soulevé par M. Knowles qui avait demandé au ministre de la Justice, de l'époque, M. Gibson:

Le Ministre est-il convaincu qu'un médecin qui effectue une telle opération dans le but de sauver la vie de la mère est hors de cause?

Je cite le Hansard de 1954. Le ministre de la Justice a répondu en ces termes:

Oui, je suis sûr qu'il le serait car il n'y aurait pas de *mens rea* dans un pareil cas, et dans tous ces cas, sans qu'il ne soit spécifié dans chaque article, la couronne se doit de prouver une intention criminelle. Monsieur le député conviendra qu'il serait très souhaitable qu'en cas d'intention criminelle de la part du médecin, celui-ci devrait être tenu criminellement responsable.

Ce point de vue a été adopté tout au moins par les médecins de l'Ontario, où à l'heure actuelle, des dispositions sont prises en faveur de l'avortement thérapeutique, et les règlements, aux termes de la Loi sur les hôpitaux publics (*Public Hospitals Act*) de 1960, article 46 se lit comme suit:

Lorsqu'une patiente dans sa pré-ménopause se trouve dans un état où un avortement thérapeutique est indiqué... le chirurgien doit informer un membre actif du personnel médical... autre que l'anaesthésiste de l'opération, lequel médecin examinera la patiente avant toute intervention chirurgicale et rédigera et signera un compte rendu du résultat de l'examen.

C'est alors seulement que l'avortement thérapeutique peut s'effectuer.

Quelle que soit la loi, la profession médicale en Ontario a sans aucun doute agi en

[Texte]

acting on the assumption that it is lawful now for a doctor to perform a therapeutic abortion, that is, an abortion certainly where the mother's life is in danger. And I am told that in one hospital in Toronto there were 87 therapeutic abortions last year.

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Unfortunately there have not been any decisions on it because the police do not prosecute *bona fide* operations of this sort, and if there are any prosecutions, there are no judicial decisions.

The other view is that whatever the doctors are doing, whatever the hospitals are countenancing, Section 237 makes it a clear offence to commit an abortion under any circumstances. Well, the effect of the proposed amendments, with respect, Mr. Chairman, I think will vary according to what your opinion of the present law is.

If one's view of the present law is that all abortion under all circumstances is at the moment unlawful in Canada, then of course the present amendments will provide for abortions to some extent, to the extent outlined on page 42. If, however, your view is that doctors in Ontario—and The Public Hospitals Act of Ontario, and the Hon. Mr. Justice Gibson in 1953, and Mr. Justice Edson L. Haines in an article he wrote—if their view is correct, then the effect of the amendment to Section 237 is going to make it more difficult to get an abortion, at least in Ontario, than it is at the moment.

The procedure in Ontario is merely that a woman goes to a doctor, to a public hospital at any rate. The doctor will decide whether or not a therapeutic abortion is indicated. He will then get a certificate from a surgeon not connected with the operation, that is, not being the anaesthetist for the operation, who will give his opinion and then the operation takes place. Now, that is a much more simple procedure than the proposed amendments to Section 237.

Mr. Woolliams: Professor, you really then are applying Section 209 at this moment.

Professor Mewett: Yes, you are, you are applying—this was again precisely the problem that Mr. Knowles raised in 1954. He says,

While we were on clause 209 there seemed to be some relationship between it and clause 237. However, in the case of clause 209 it was pointed out that there

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[Interprétation]

prenant pour acquis qu'un médecin peut légalement effectuer un avortement thérapeutique, c'est-à-dire un avortement où la vie de la mère est certainement en danger. Et j'ai appris que dans un seul hôpital à Toronto, il y a eu, l'année dernière, 87 avortements thérapeutiques. Malheureusement, les autorités policières ne traduisent pas en justice les médecins qui effectuent, de bonne foi, les opérations de ce genre, et même s'ils sont traduits en justice, aucune décision juridique n'est prise.

Selon un autre point de vue, quoi que fassent les médecins, et quel que soit le point de vue de l'hôpital, l'article 237 fait de l'avortement un délit, quelles que soient les circonstances. L'effet des modifications envisagées, monsieur le président, pourra varier selon l'opinion que l'on peut avoir de la loi actuelle.

Si l'on pense que, selon la loi actuelle, tous les avortements effectués en toutes circonstances en ce moment, sont considérés au Canada comme étant contraires à la loi, il va de soi que les présentes modifications permettront les avortements dans une certaine mesure, tel qu'il est indiqué en page 42. Si toutefois d'après vous, les médecins de l'Ontario, la «*Public Hospitals Act*» de l'Ontario, les juges Gibson et Edson C. Haines ont raison, je dirai que l'amendement à l'article 237 rendra plus difficiles qu'elles ne le sont, les tentatives d'obtenir un avortement, du moins en Ontario. Actuellement, voici ce qui se passe en Ontario. La mère va voir le médecin, dans un hôpital public, le médecin décidera si oui ou non l'avortement thérapeutique est indiqué et il obtiendra ensuite un certificat d'un chirurgien qui n'est pas directement en cause lequel lui donnera son avis, après quoi l'intervention a lieu. C'est une façon beaucoup plus simple de procéder que l'amendement envisagé de l'article 237.

M. Woolliams: Je ne veux pas vous interrompre, monsieur, mais si je comprends bien, vous appliquez vraiment l'article 209 en ce moment.

M. Mewett: Oui, c'est vous qui l'appliquez. Voilà précisément, une fois de plus, le problème que soulevait Monsieur Knowles en 1954. Il disait:

Pendant qu'on étudiait l'article 209 du Bill, il semblait y avoir un rapport avec l'article 237 du même bill. Cependant dans le cas de l'article 209 du Bill, on

[Text]

was protective language covering cases carried out in good faith. That protective language does not seem to appear in clause 237.

And then he wanted to know why, and the Minister of Justice said that it was unnecessary in Section 237 because that is covered by the concept of *mens rea*, which I do not agree with, but still ...

In my respectful submission, Mr. Chairman, if that is the position which you want to reach, and which of course is a policy decision, it can be much more easily accomplished merely by re-introducing the word "unlawfully" in Section 237. If the word unlawfully is re-introduced into Section 237, it makes it quite apparent that the Bourne principle would apply to abortion in Canada, and the difficulty then becomes ...

Mr. Woolliams: Professor, would you set out what the Bourne principle is for some of the laymen?

Professor Mewett: Yes. In the Bourne case of 1938, the High Court of England held that a doctor was not guilty of performing an unlawful operation—and, of course, the key is that the word "unlawfully" is in the offence against the person act in England, whereas it is not in Section 237—if the object of procuring the miscarriage is to preserve the life or serious mental health, I forget the exact phrase, preserving the life or mental health of the mother.

The case itself concerned, I think, a 14-year-old girl who had been raped and who was about to have a nervous breakdown. Alexander Bourne decided to operate, and his defence was that the operation was necessary to preserve her mental health, and he was acquitted on those grounds. So that the Bourne principle is really an interpretation of what is meant by the word "unlawfully" in connection with these operations.

Mr. Woolliams: May I ask you to pause there, so that this is on record? You are dealing with the Canadian Section 209. I think it should be read in at this time. Then I will ask you the next question which is dealing right with the point you are on, if I might, Mr. Chairman.

209. (1) Every one who causes the death of a child that has not become a human being, in such a manner that, if the child were a human being, he would be guilty of murder, is guilty of an indictable offence and is liable to imprisonment for life.

[Interpretation]

avait indiqué que les cas d'avortements effectués de bonne foi, il était question de protection de la vie de la mère. L'article 237 du bill ne mentionne pas cette protection.

Puis il voulait savoir pourquoi, et le Ministre avait répondu qu'il n'y avait pas lieu de le mentionner à l'article 237 parce que c'était prévu par le concept du *mens rea*, ce auquel je ne suis pas d'accord, mais ...

A mon avis, monsieur le président, si c'est le but, le principe que vous recherchez, ce qui est évidemment une question de principe facilement en ré-introduisant les mots «illicitement» à l'article 237. Si les mots «illicitement» sont ré-introduits dans 237, il devient parfaitement manifeste que le Bourne principe s'appliquerait aux avortements au Canada et le problème devient alors ...

M. Woolliams: Monsieur Mewett, est-ce que vous pourriez nous dire ce qu'est le principe Bourne?

M. Mewett: Dans l'affaire Bourne de 1938, la Haute Cour d'Angleterre a jugé que le médecin n'était pas coupable d'avoir procédé à une intervention chirurgicale illégale. Il est un fait que dans la loi britannique le terme «illégal» a trait à la personne et non à la loi alors que dans l'article 237, c'est tout le contraire. Si le but de l'avortement est de préserver la vie ou la santé mentale de la mère. Il s'agissait d'une fille de quatorze ans qui avait été violée et qui était sur le point d'avoir une dépression nerveuse. Alexander Bourne avait décidé de l'opérer. Il a prétendu que l'opération était nécessaire pour préserver sa santé mentale et il a donc été acquitté pour ce motif. Ainsi, le principe Bourne est en somme une question d'interpréter ce que veut dire le terme «illicitement» dans ce genre d'opération.

M. Woolliams: Arrêtons-nous un instant afin que tout ceci soit enregistré. Il s'agit ici de l'article 209. Je pense que l'on devrait d'abord lire l'article puis, si vous le permettez, monsieur le président, je poserai la prochaine question qui traite du sujet que vous avez en ce moment.

209 (1) Est coupable d'un acte criminel et passible d'emprisonnement à perpétuité, toute personne qui, au cours de la mise au monde, cause la mort d'un enfant qui n'est pas devenu un être humain, de telle manière que, si l'enfant était un être humain, cette personne serait coupable de meurtre.

[Texte]

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[Interprétation]

(2) This section does not apply to a person who, by means that, in good faith, he considers necessary to preserve the life of the mother of a child that has not become a human being, causes the death of the child.

(2) Le présent article ne s'applique pas à une personne qui, par des moyens que, de bonne foi, elle estime nécessaires pour sauver la vie de la mère d'un enfant, cause la mort de l'enfant.

And I take it from conversations I had with you this morning, that you feel that the Bourne case principle that interprets the preservation of the life has been applied in Ontario, and I believe it has been applied elsewhere in Canada. It does not mean to save her from violent death, but it means to preserve her life, in a case where she might otherwise be left impaired physically or emotionally. Then of course the doctor in good faith who performs such a therapeutic abortion would fall into the saving and exception clause of Section 209. What you are really saying is, with the strength of Section 209 and considering proposed Section 237, if the word "unlawfully" were put in you would be obtaining the same result basically of what the Bill is trying to do at the present time. Actually, from a legal point of view, when you take in the case law and the statute law of Canada, you are not, in fact or law, really changing the law very much.

Et je conclus qu'à la suite des entretiens que j'ai eus avec vous ce matin, vous pensez que le principe de l'affaire Bourne qui interprète les mots «préservations de la vie» a été appliqué en Ontario et ailleurs au Canada. Il ne s'agit pas de sauver la femme d'une mort violente, il s'agit de protéger sa vie, dans un cas qui autrement, pourrait la laisser physiquement ou mentalement ébranlée.

Ainsi donc, le médecin qui, de bonne foi, pratique un avortement thérapeutique tomberait sous le coup de la clause restrictive de l'article 209. Vous voulez dire, en fait, en vous appuyant sur l'article 209 et en tenant compte de l'article projeté 237, que si le mot «illégalement» y était incorporé, on obtiendrait fondamentalement le même résultat que le projet de loi cherche actuellement à atteindre. A l'heure actuelle, d'un point de vue juridique, lorsque vous considérez les décisions passées qui ont force de loi et la jurisprudence, vous ne modifiez pas beaucoup la loi, que ce soit sur le plan des faits ou du droit.

Professor Mewett: That is my view, sir, yes.

M. Mewett: Je partage, en effet, cette opinion.

The Chairman: Mr. Murphy?

Le président: Monsieur Murphy?

Mr. Murphy: I would just like to ask the witness whether it is not true that under Section 209 anyone can perform the type of operation that you are talking about. It would not have to be a qualified medical practitioner.

M. Murphy: N'est-il pas vrai que n'importe qui pourra pratiquer une intervention de ce genre sans être obligatoirement un médecin qualifié?

Professor Mewett: That is quite right, sir, but I think the difference is that under Section 209 you are concerned with emergency situations. It is causing the death of the child during the act of birth, and one can well envisage situations where—obviously this is a short period of time—a member of the medical profession is just not available. Clearly, causing the death of a child in the act of birth is likely to be more of an emergency than an abortion at some time before the onset of birth. There may not be any time to get a doctor in the circumstances of Section 209, but it is difficult—I agree it is not impossible but it would be difficult—to envisage not being able to get a doctor in time to perform an abortion prior to the onset of birth.

M. Mewett: C'est exact, monsieur, mais dans l'article 209, il s'agit de situations d'urgence: essayer de provoquer la mort de l'enfant *au cours de la mise au monde*. Mais, on peut naturellement envisager des situations où un médecin n'est pas disponible à ce moment précis. En conséquence, provoquer la mort de l'enfant *au cours de la mise au monde*, constituerait plus un cas d'urgence qu'un avortement provoqué à un stade antérieur. On n'aurait pas le temps de trouver un médecin dans les circonstances prévues par l'article 209. C'est difficile, je sais que ce n'est pas impossible mais il serait difficile, d'envisager qu'on ne soit pas capable de trouver un médecin à temps pour pratiquer l'avortement.

[Text]

The Chairman: Mr. Chappell?

Mr. Murphy: I was not finished, Mr. Chairman.

The Chairman: I am sorry.

Mr. Murphy: You make reference to the phrase "in the act of birth". Are you referring to the existing Section 209 or the proposed amendment to Section 209?

Professor Mewett: To be honest, I am referring to the existing section. I am aware that section is not in, but nevertheless that is the way the section has been interpreted. It is copied from the *Offences Against the Person and Reputation* in the Act where the phrase "in the act of birth" appears. I do not know—my own view is that it was merely an oversight in the draft of the Code because there has been no case where Section 209 has not really applied to the act of birth type of situation. It is dealing really with that short period of time when the mother is in labour and the child is being born. I think the proposed amendment—that is, the addition of the phrase "in the act of birth"—does no more than make perfectly clear what is presently the law.

Mr. Murphy: Is your suggestion that everything it is sought to accomplish by these amendments to Section 237 could be accomplished by amending Section 209 by adding the word "unlawfully" and the words "in the act of birth"?

Professor Mewett: No, sir. I was saying that if you added to Section 237 the word "unlawfully" instead of these amendments—merely inserting the word "unlawfully"—you would then make it quite clear that the principles adopted in *Rex v. Bourne* would also apply to Canada; that is, whether the doctor performs the operation in good faith to save the life in the sense that Mr. Woolliams explained, the life of the mother.

But then the question which really arises and which the Committee would have to consider, is whether or not that is sufficient—in other words, whether you wish to leave it up to the medical profession to determine whether it is the doctor who decides whether or not the life of the mother is in danger. What the proposed amendments do, in fact, is to provide safeguards against the doctor making his own decision by providing for a therapeutic abortion committee.

[Interpretation]

Le président: Monsieur Chappell?

M. Murphy: Je n'ai pas terminé, monsieur le président.

Le président: Je m'excuse monsieur Murphy.

M. Murphy: Vous parlez de l'expression *au cours de la mise au monde*. Est-ce que vous vous reportez à l'ancien article 209 ou à la modification proposée de l'article 209?

M. Mewett: Je parle de l'article 209 sous sa forme actuelle. Je sais que cet article n'y est pas mais c'est pourtant ainsi que l'on a interprété l'article en question. Il est d'ailleurs copié des *Offenses entre la personne et sa réputation* de la loi où figure l'expression *au cours de la mise au monde*. Je ne sais—à mon avis, il s'agit seulement d'un simple oubli survenu lors de la rédaction préliminaire du Code, parce qu'on n'a rencontré aucun cas où l'article 209 ait été appliqué lors d'un avortement, *au cours de la mise au monde*. Il s'agit vraiment de la courte période de temps où la femme accouche et où l'enfant naît. Je pense que la modification proposée, soit l'addition de l'expression *au cours de la mise au monde*, ne fait que préciser la loi actuelle.

M. Murphy: Dois-je en conclure que tout ce qu'on cherche à accomplir par les modifications apportées à l'article 237 pourrait être fait en ajoutant à l'article 209 le terme «illégalement» et l'expression *au cours de la mise au monde*?

M. Mewett: Non, monsieur. Je disais que si vous ajoutiez le mot *illégalement* à la section 237, au lieu de ces modifications, en introduisant seulement ce terme, vous indiqueriez clairement que le principe adopté dans le Roi en cause avec Bourne, pourrait également s'appliquer au Canada, c'est-à-dire que le docteur pratique cette opération de bonne foi pour sauver, comme l'a dit monsieur Woolliams, la vie de la mère.

Mais la question qui se pose vraiment et que le Comité devra examiner, c'est de savoir si cela est suffisant, autrement dit, si vous désirez laisser au corps médical le soin de déterminer si c'est le médecin qui va décider si la vie de la mère est en danger. Et, ce que le projet d'amendement veut, c'est en fait d'assurer une protection contre la décision du médecin, en créant un comité sur l'avortement thérapeutique.

[Texte]

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In other words, if you just insert the word "unlawfully", which I think would be the simplest way of doing it, you are in fact saying it is now up to the doctor—just as it was in *Rex v. Bourne*—to decide on medical grounds whether in his opinion the therapeutic abortion is necessary. Now, you might decide that you would want more guarantees than merely the subject of opinion of a doctor, and you might decide therefore that you want a committee to work.

At the moment Ontario has not taken that view, although there have been proposals. For instance, Dr. Gray reporting in 1965 said;

37. Consideration should be given as to whether the present legislation is satisfactory. For example, the regulation might be repealed and replaced by a requirement that each hospital establish a committee on abortion.

In other words, I am saying that if you just add the word "unlawfully" you are leaving it up to the doctor to decide whether or not the operation is necessary, and you may not want to go that far.

Mr. Murphy: Thank you.

The Chairman: Mr. Chappell?

Mr. Chappell: Professor Mewett, I might say that I was tempted to this view myself, but would you consider this for a moment? If you simply tried to accomplish it by adding the word "unlawfully" to Section 237, could we persuade a jury to exonerate a nurse, a midwife, a medical student, or a doctor who had lost his licence? Why do you think it would be confined to the medical profession?

There might be a place where there is no doctor, some small town somewhere, and some person really thought he was doing a kindness and, perhaps, an absolutely necessary act to save a life. Why would it not apply to that person as well as to the medical people?

Professor Mewett: I think conceivably it would. Mr. Fulton, in 1954, asked the Minister of Justice

"Who is to say whether it is justified?"

and the Minister of Justice replied,

"Whether it is justified or not is a question of fact for the court to decide."

I can envisage some circumstances in a remote farm community where a midwife might have to make this decision.

Mr. Chappell: Or a husband might.

[Interprétation]

En d'autres mots, si vous ne faites qu'insérer le mot «illégalement» qui, d'après moi, serait la façon la plus simple de procéder, vous dites que c'est dorénavant laisser au médecin, le choix de décider si l'avortement thérapeutique est nécessaire, tout comme dans le *Roi en cause avec Bourne*. Alors, vous pourriez décider d'avoir autre chose comme garantie que simplement l'avis du docteur. Vous décideriez par conséquent de créer un comité.

A l'heure actuelle, l'Ontario n'a pas adopté cette proposition bien qu'on l'ait fait. Ainsi, le docteur Gray disait en 1965, qu'il fallait examiner si la Loi actuelle était satisfaisante et si elle ne devrait pas être abrogée et remplacée par la condition portant que chaque hôpital créerait un comité sur l'avortement. Autrement dit, si vous ajoutez le mot «illégalement», vous laissez au médecin le soin de décider si cette opération est nécessaire ou non, et vous n'avez peut-être pas envie d'aller aussi loin.

M. Murphy: Merci.

Le président: Monsieur Chappell.

M. Chappell: Monsieur Mewett, je dois dire que j'ai failli adopter cette opinion, mais si vous essayez d'arriver à ce résultat en ajoutant le mot *illégalement* à l'article 237, croyez-vous que nous puissions convaincre un jury de disculper une infirmière sage-femme, un étudiant en médecine ou un médecin qui a perdu son permis pour pratiquer. Pourquoi pensez-vous que cette pratique sera réservée au corps médical seulement?

Il peut y avoir un endroit où il n'y a pas de médecin, quelque petite ville, par exemple, où personne pense qu'il a fait un acte charitable et peut-être absolument nécessaire pour sauver une vie. Pourquoi ne donnerait-on pas à cette personne les droits qu'on accorde au corps médical?

M. Mewett: Je pense que ce serait possible. En 1964, M. Fulton a demandé au ministre de la Justice, «Qui pourra dire si l'acte est justifié». Le ministre a répondu «Que ce soit justifié ou non, c'est au tribunal de décider». Moi, je peux penser à certains cas, où dans un village reculé, une sage-femme ait à prendre cette décision.

M. Chappell: Ou le mari même.

[Text]

Professor Mewett: Or a husband might have to, but I would also say that in a place such as Toronto no one could persuade the court that a midwife's decision would make it justifiable, not when the medical profession is available. In other words, I think it would depend upon the circumstances.

Mr. Chappell: Let me try this out a little further. Let us suppose it was some person who just did not have any money and there was a doctor friend who came from the same land in Europe or Asia, and that doctor friend said, "Well, I will do it for \$10" or perhaps for nothing. If the person persuades the jury they could not afford a doctor could not the jury exonerate that person?

Professor Mewett: No; it has to be justified from the doctor's point of view, not from the mother's point of view.

Mr. Chappell: But my point is this person did have medical knowledge but he is not licensed.

Professor Mewett: Then the Court would have to decide factually whether or not he was correct in saying it was therapeutically justified.

Mr. Chappell: Yes, but a jury could come to...

Professor Mewett: A jury could, indeed. I think that is quite right. As I say, I think it would depend upon the surrounding circumstances. I think mere lack of money would hardly be grounds for justifying a decision being taken by a doctor who did not take it on proper medical grounds.

Mr. Chappell: Quite, but my point is, though, that the whole motivation could be honest on the part of the person who requested it and the person who went about it with honest and good intent. This could spill over and affect many others besides doctors.

Professor Mewett: I think conceivably that is true but, mind you, if it is done with good intent, why should it not spill over?

Mr. Chappell: My concern is whether the Committee wishes it opened up, because some of these professional abortionists might move in.

[Interpretation]

M. Mewett: ...ou le mari même, qui devrait prendre cette décision. Mais j'aimerais aussi ajouter que dans une ville comme Toronto, personne ne pourrait convaincre le tribunal que la décision de la sage-femme était justifiable, quand il est possible de trouver un médecin. Autrement dit, je pense que cela dépendrait entièrement de la situation.

M. Chappell: Essayons d'aller un peu plus au fond des choses. Supposons, par exemple, que la personne n'avait pas d'argent, et qu'un de ses compatriotes et médecin, qu'il soit d'Europe ou d'Asie, lui dise: «Je vais le faire pour \$10 ou même peut-être gratuitement». Alors si la personne convainc le jury qu'elle ne pouvait pas se permettre financièrement d'aller voir un docteur, est-ce que le jury ne peut pas disculper cette personne?

M. Mewett: Non, cela doit être justifié du point de vue du docteur et non pas du point de vue de la mère.

M. Chappell: Mais, cette personne était compétente sur le plan médical mais n'avait pas de permis pour exercer sa profession.

M. Mewett: A ce moment-là, c'est au tribunal de décider *de facto* s'il avait raison de dire qu'il y avait justification sur le plan thérapeutique.

M. Chappell: Mais, un jury pourrait...

M. Mewett: Oui, parfaitement. Un jury pourrait le faire. Mais, comme je le dis, cela dépendrait en fait des circonstances. Je pense que qu'un simple manque d'argent justifierait difficilement la décision qu'aurait prise un docteur sur un plan autre que médical.

M. Chappell: D'accord, mais ce que je veux dire, c'est que la personne qui l'a demandé pourrait être honnête, et que la personne qui a pratiqué l'intervention pourrait être allé en toute honnêteté et avec les meilleures intentions du monde, et que cet incident pourrait se répandre et retomber sur un grand nombre de personnes autres que les médecins.

M. Mewett: Je pense que vous avez raison. Mais, en fait, si c'est fait avec de bonnes intentions pourquoi la chose ne serait-elle pas dite, ouvertement?

M. Chappell: Je me demande si le Comité voudrait laisser le champ ouvert pour que quelques avorteurs de métier puissent s'établir.

The Chairman: Mr. Woolliams?

Le président: Monsieur Woolliams?

[Texte]

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Mr. Woolliams: I think, with the greatest respect to Mr. Chappell, he may be overlooking the professional acts of the various provinces. I want to draw this analogy. To differentiate between what a dentist and a dental mechanic can do you have to go to the dental act. A dentist is defined in most of these acts as a person who takes an impression for a fee.

Now in the famous *Vail* case in the city of Drumheller where Mr. Schumacher comes from, the dental mechanics—and I am just using this as an illustration—did not charge for the impression but they charged for manufacturing the teeth. Although two courts upheld that, the Supreme Court of Canada said indirectly they benefited.

Now I come to the analogy. Every province has certain provincial laws and certain regulations as to who can perform an operation. I would think a therapeutic abortion is an operation. I can see Mr. Chappell's position in respect of an Arctic situation. I am sure if there was no doctor and the RCMP or somebody in that category did the best they could under the circumstances, no court would ever convict.

But I am certain that when you read the words of the Criminal Code, even though it refers to persons, you have to read it in the light of that provincial legislation which Professor Mewett has referred to even in other fields in reference to abortion affecting the Ontario law. I cannot believe that any court would accept this. I agree with the professor in this regard, not only in the interpretation of the law but in the light of the various provincial statutes that exist in all our provinces in reference to this matter. Doctors who perform operations have to qualify by the rule of law.

For example, an appendectomy certainly could not be done by an ordinary layman in a hospital. It may be possible that it could be done outside say,—the city of Toronto—again, up in the Arctic—but those would be extreme circumstances that a court and a jury would take into consideration when interpreting the law.

The Chairman: Mr. MacGuigan.

Mr. MacGuigan: Professor Mewett, I take it that when you suggest adding the word "unlawfully" you do not have in mind that this would bring into effect the exonerating provi-

[Interprétation]

M. Woolliams: Je pense que monsieur Chappell, malgré tout le respect que je lui porte, me permettra de lui dire qu'il semble négliger les lois des provinces sur les professions. Pour faire la différence entre le rôle d'un dentiste et celui d'un mécanicien dentiste, il faut se reporter à la Loi sur l'art dentaire où un dentiste comme quelqu'un y est le plus souvent défini comme étant la personne qui prend une empreinte contre redevance.

Dans le fameux cas *Vrail*, de la ville de Drumheller, ils n'avaient pas perçu de redevances pour les empreintes, mais pour la fabrication des dents. Même si deux tribunaux ont soutenu la question, la Cour suprême du Canada a dit indirectement qu'ils en bénéficiaient.

J'en arrive à la question d'analogie. Toutes les provinces ont des lois provinciales et certains règlements relatifs à la personne qui veut opérer. Je pense qu'un avortement thérapeutique est une opération. Je comprends la position de M. Chappell, face à des cas qui se passeraient dans l'Arctique. Je suis sûr que s'il n'y a aucun médecin et que la Gendarmerie royale ou quelqu'un de cet ordre, fait tout ce qu'il peut, et au meilleur de ses connaissances, dans de telles circonstances, aucun tribunal ne condamnerait qui que ce soit.

Mais lorsque vous lisez le Code criminel, même s'il s'agit de personnes, il faut le lire à la lumière de la Loi provinciale à laquelle M. Mewett s'est reporté, même dans d'autres domaines se rapportant notamment à la Loi d'avortement de l'Ontario. Je ne puis croire qu'un tribunal accepte cela. Je partage l'opinion de M. Mewett à cet égard, non seulement pour l'interprétation de la Loi, mais à la lumière des différents statuts provinciaux relatifs à ces questions. Les médecins qui pratiquent ces opérations doivent être reçus d'après la Loi.

Par exemple, un simple citoyen ne pourrait pas faire une appendicectomie dans un hôpital. Il est peut-être possible qu'on le fasse à l'extérieur, disons, de la ville de Toronto, dans l'Arctique, par exemple, mais ce serait là des cas extrêmes, qu'un tribunal et un jury prendraient en considération avant de rendre une décision.

Le président: Monsieur MacGuigan...

M. MacGuigan: Monsieur Mewett je conclus donc que lorsque vous proposez d'ajouter le mot «illégalement», vous ne pensez pas que cela mettra en vigueur la disposition d'exoné-

[Text]

sion of proposed Section 209, paragraph (2). You obviously are referring to the Bourne Case.

Professor Mewett: Yes, with reference to the life of the mother—life in the sense of not immediate death but the continuing life of the mother.

Mr. MacGuigan: Yes, but we can start with the assumption that proposed Section 209(2) refers only to that situation in the act of birth and does not provide, even with the word “unlawfully,” any further exemption.

Professor Mewett: I think that is right.

Mr. MacGuigan: Then coming to the word “unlawfully” with respect to the interpretation which was given to that by the Bourne Case, would you agree that the Bourne Case is not a binding authority in Canada?

Professor Mewett: Yes, sir.

Mr. MacGuigan: So that at most it can be a persuasive authority.

What is there in the word “unlawful” which would validate the interpretation which was given to it by the Bourne Case. Is it not true that *mens rea* under Section 237 is clearly written into that section in the words:

...with intention to procure the miscarriage of a female person,...

Professor Mewett: I think the word “unlawful” would refer back to Section 45, if I may:

45. Every one is protected from criminal responsibility for performing a surgical operation upon any person for the benefit of that person if

(a) the operation is performed with reasonable care and skill, and

(b) it is reasonable to perform the operation, having regard to the state of health of the person at the time the operation is performed and to all the circumstances of the case.

And I think the inclusion of the word “unlawful” would mean, therefore, that in interpreting Section 237 the courts would refer back to Section 45 and say:

...if

(a) the operation is performed with reasonable care and skill, and

(b) it is reasonable to perform the operation,...

and it is performed for the benefit of the person on whom it is performed—that is, for the mother.

[Interpretation]

ration de l'alinéa 2 de l'article 209. Vous vous reportez évidemment au cas Bourne.

M. Mewett: Concernant la vie de la mère, non pas dans le sens de mort immédiate mais de continuité de la vie de la mère.

M. MacGuigan: Oui, nous pourrions partir de l'hypothèse que l'alinéa 2 de l'article 209 proposé se reporte seulement au cas au cours de la mise au monde et même avec l'insertion du terme «illégalement», il n'assure aucune exonération.

M. Mewett: Je crois que c'est exact.

M. MacGuigan: Alors, pour en revenir au mot «illégalement», au sujet de l'interprétation qui y a été donné dans le cas Bourne, êtes-vous d'accord pour dire que ce n'est pas un cas d'autorité au Canada.

M. Mewett: Oui, monsieur.

M. MacGuigan: Ainsi, ce ne peut être tout au plus qu'une autorité de persuasion. Qu'est-ce qui, dans le mot «illégal» pourrait rendre valable l'interprétation accordée au cas Bourne. Il n'est pas vrai que l'expression *mens rea* dans l'article 237 soit écrite bien clairement par ces mots:

avec l'intention de procurer l'avortement d'une personne du sexe féminin...

M. Mewett: Je pense que le mot «illégalement» renverrait à l'article 45, qui stipule:

45. Toute personne est à couvert de responsabilité criminelle lorsqu'elle pratique sur une autre, pour le bien de cette dernière, une opération chirurgicale,

(a) si l'opération est pratiquée avec des soins et une habileté raisonnables,

(b) s'il est raisonnable de pratiquer l'opération, étant donné l'état de santé de la personne au moment de l'opération et toutes les autres circonstances de l'espèce.

Et, je pense que l'insertion du mot «illégal» voudrait dire que, peut-être, alors, en interprétant l'article 237, on renverrait à l'article 45 du Code criminel, et on dirait que si

(a) l'opération est pratiquée avec des soins et une habileté raisonnables, et

(b) s'il est raisonnable de pratiquer l'opération...

et qu'elle est faite dans l'intérêt de la patiente, c'est-à-dire la mère.

[Texte]

So if the operation is lawful in the sense that it is performed for the benefit of the mother, that it is performed with reasonable

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care and skill and that it is reasonable to perform the operation, then you would be protected from criminal liability even if the operation was an abortion.

Whereas the way Section 237 at present reads, you do not now apply the general provisions of Section 45. The way that it now reads—and I mean literally—it is always a criminal offense to perform an operation of abortion under any circumstances, provided you have *mens rea*. But *mens rea* in that case, in my opinion anyway, means merely that you know that you are performing an abortion operation. In other words, it is a type of *mens rea* which goes to the knowledge that you are performing the abortion, not the consequences of the operation.

Mr. MacGuigan: It seems to me that you are putting a lot of weight on Section 45. Presumably that would have to be interpreted by the common practice of the medical profession.

Professor Mewett: Yes.

Mr. MacGuigan: There would be medical evidence given on that point. It seems to me that this is somewhat questionable in the light of what would purport, even I think with the addition of the word "unlawfully" to Section 237 (1), to be a pretty blanket prohibition of any action of that particular kind.

I would suggest that the Bourne Case and the interpretation which you are giving is a somewhat advance case of judicial interpretation. We all know of course that judges make as well as interpret the law, but I think that in a case where there is this much doubt and where there is a certain extension of judicial interpretation it could certainly be argued that it would be preferable for us to define the matter here more carefully than to leave this to this type of extended judicial legislation.

Professor Mewett: I agree, sir. I mean if it is not desirable to leave it up to the doctor then I agree that it is necessary to have some limitation put on the discretion of the doctor. Obviously you and I agree as to the present state of the law, but you would have to say therefore that the Public Hospitals Act of Ontario presumably is illegal or unconstitutional anyway, because at the moment the Public Hospitals Act of Ontario assumes that it is the doctor himself who has the right to make the decision. Now this may be unjustifi-

[Interprétation]

Ainsi donc, si l'opération est licite, en ce sens qu'elle est pratiquée au bénéfice de la mère et avec des soins et une habileté raison-

nables et qu'il est raisonnable de pratiquer l'opération en question, il n'y aurait pas de responsabilité criminelle même s'il s'agissait d'un avortement.

En vertu du texte actuel de l'article 237 on n'applique plus maintenant les dispositions générales de l'article 45 du Code criminel. La manière dont on peut interpréter le texte, j'entends ou mot à mot, en toutes circonstances, c'est toujours une offense criminelle que de pratiquer une opération d'avortement, à condition qu'il y ait préméditation. A mon avis, dans ce cas-ci, *mens rea* signifie seulement que l'on sait que l'on pratique un avortement. En d'autres termes, c'est un type de *mens rea* qui s'applique à la connaissance du fait que l'on pratique un avortement, et non pas aux suites de l'opération.

M. MacGuigan: En fait, vous attachez une grande importance à l'article 45; il faudrait, sans doute, l'interpréter à la lumière des méthodes normales des médecins, à cet égard.

M. Mewett: Oui.

M. MacGuigan: Il faudrait là-dessus des témoignages de spécialistes. C'est assez discutable à la lumière de ce qui aurait la prétention, même avec l'addition du mot «illicite» à l'alinéa (1) de l'article 237, d'être une interdiction un petit peu trop générale, en ce qui concerne des actes de ce genre.

L'affaire Bourne et l'interprétation que vous en donnez sont des cas d'interprétation judiciaire avancés. Nous savons tous, bien sûr, que les juges n'interprètent pas seulement la Loi, mais qu'ils la font. Dans un cas où il subsiste autant de doutes que celui-ci, et où il existe une certaine extension de l'interprétation juridique il serait sans doute préférable que nous définissions le sujet ici avec un peu plus de soin plutôt que de nous en remettre ici au genre de législation judiciaire élastique.

M. Mewett: Je suis de votre avis, monsieur. S'il n'est pas bon de tout laisser aux médecins, il serait certainement indispensable d'introduire ici une certaine limite dans l'étendue de leur pouvoir discrétionnaire. Nous partageons évidemment le même avis sur l'état actuel de la Loi mais il faudrait toutefois que vous disiez que la *Public Hospitals Act* de l'Ontario est assurément à la fois illégale et non-constitutionnelle. Car, à l'heure actuelle, la loi sur les hôpitaux publics de l'Ontario suppose que c'est au médecin lui-même que

[Text]

able; I agree that it is a question of interpretation.

There is, however, a large opinion, including that of Mr. Justice Haines who holds that this is the case. I do not think the Bourne Case is even binding in England. I must admit it is only a court of first instance.

Mr. MacGuigan: I would agree with the witness' interpretation of the law as it stands.

The Chairman: Mr. Peters.

Mr. Peters: I would like to ask a couple of non-professional questions? Does the witness believe that the changes that are being made in this law will eliminate the hundreds of thousands of abortions taking place every year?

Professor Mewett: No sir, it will do absolutely nothing for that.

Mr. Peters: What is the purpose of this amendment then.

Professor Mewett: I do not know.

Mr. Peters: It is really a legal exercise to protect a situation that has developed in hospitals.

Professor Mewett: I am hardly in a position to say what the purpose of the legislation is, but it will of course protect what is now going on in hospitals all across the country—except it will make it rather more complicated. But at least if the doctor follows the act he will be protected.

Mr. Peters: Not only more complicated but it would be more expensive.

Professor Mewett: Presumably more expensive and presumably slower and more delays than there are at the moment.

Mr. Peters: If we took the abortion section out of the Criminal Code—and I ask this as a layman because I do not have the knowledge of how strong, legally, the position is surrounding doctors and their responsibilities—and put it in exactly the same category as an appendectomy, although it is a much simpler operation than an appendectomy, how much protection would the public have?

Let me go back on this: We set up in northern Ontario some time ago a medical plan that covered everyone in the area. In going over the accounts we suddenly learned that one group of doctors were doing a terrific

[Interpretation]

revient le droit de prendre une décision. Ce n'est peut-être pas justifiable, mais je suis d'accord que c'est une question d'interprétation. Toutefois, il y a beaucoup de gens, y compris le juge Haines qui soutiennent que c'est le cas type. Je ne pense pas que même le cas Bourne soit irrévocable en Angleterre. Je dois admettre que ce n'est que la décision d'un tribunal de première instance.

M. MacGuigan: Je suis de l'avis du témoin en ce qui concerne l'interprétation de la Loi dans son état actuel.

Le président: Monsieur Peters?

M. Peters: J'ai quelques questions à caractère non technique. Est-ce que le témoin croit que les modifications apportées à la Loi feront disparaître les milliers d'avortements?

M. Mewett: Non. Cela n'aura aucun effet là-dessus.

M. Peters: Quel est donc le but de l'amendement?

M. Mewett: Je ne sais pas.

M. Peters: Il s'agit de protéger, par un acte juridique, une situation qui existe dans les hôpitaux.

M. Mewett: Je peux difficilement dire quel est le but de la mesure législative; il est certain qu'elle va entériner ce qui se passe déjà dans les hôpitaux d'un bout à l'autre du pays, à ceci près que ce sera un peu plus compliqué. Toutefois, si le médecin se conforme à la Loi, il sera au moins protégé.

M. Peters: Ce sera non seulement plus compliqué, cela coûtera plus cher.

M. Mewett: Ce sera probablement plus cher, plus lent et plus compliqué qu'aujourd'hui.

M. Peters: Si nous supprimions la disposition relative à l'avortement du Code criminel, je vous pose cette question en tant que profane car je ne connais pas avec quelle force la loi s'exerce sur les médecins et sur leurs responsabilités, je le mets dans la même catégorie qu'une appendicectomie, même si c'est une opération beaucoup plus simple qu'une appendicectomie. Quel serait le degré de protection dont jouirait le public?

Dans le Nord de l'Ontario, nous avons mis au point, il n'y a pas tellement longtemps, un régime médical pour tous les habitants de la région. Mais, en vérifiant les comptes, nous nous sommes rendu compte qu'un groupe de

[Texte]

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amount of hysterectomies. They were doing them in the very low age category and this was highly improper. However, they covered themselves by having two doctors do it. Could a simple arrangement that normally works in that case be provided under the law, as we have it in this Section 45, to protect against those irresponsible persons who do abortions when they do not need to be done, or when there is no pregnancy? This is often done now by illegal abortionists. Many operations are done for which there is no need. Would this be a protection against that?

Professor Mewett: You mean if they removed the offence of abortion entirely? I think the only protection you would have would be the ethics of the medical profession.

Mr. Peters: Is this sufficient to...

Professor Mewett: All professions have black sheep, including the legal profession.

Mr. Woolliams: It does not apply to members of Parliament!

Mr. Peters: Somebody made the remark the other day, "If a law is a bad law enforce it strictly and you will get rid of it." We are certainly not enforcing the law relative to abortion very strictly, and we are not getting rid of it.

How would you suggest the law could be amended to eliminate these illegal abortions that are taking place literally by the thousands?

Professor Mewett: By making it—and I am not sure, sir, how to do it—by somehow making it much easier to get a medical abortion and by inflicting the most severe penalties for illegal, back street abortion; in other words, treat the whole problem rather differently from how it is treated at the moment.

The aim is to stop the back street abortionist and preventing the manslaughters and the killings which come from illegal, back street abortions. The only way I think one can do that is to make it easier to get legal abortions. How you phrase the legislation, I do not know, but philosophically this is what I would like to see.

The Chairman: Mr. Hogarth?

Mr. Hogarth: Professor Mewett, the Bourne principle, from the defence of Dr. Bourne, arose out of a common law principle; is that not so?

[Interprétation]

médecins faisaient un nombre incroyable d'hystérectomies.

Ils les faisaient sur des personnes très jeunes, ce qui était tout à fait irrégulier. Ils se couvraient cependant en étant deux médecins pour faire l'opération. Est-ce qu'il ne serait pas possible d'insérer dans la loi une simple disposition, comme elle existe dans l'article 45? Il serait ainsi possible de protéger le public contre ces personnes irresponsables qui pratiquent des avortements sans besoin et même lorsqu'il n'y a pas grossesse. Ce que font souvent, à l'heure actuelle, les avorteurs illégaux. Est-ce que cette mesure serait une protection adéquate en de tels cas?

M. Mewett: Vous voulez dire, ne plus considérer l'avortement comme un délit? Je crois que la seule protection qui existerait alors résiderait dans la conscience professionnelle des médecins.

M. Peters: Est-ce que ce sera suffisant?

M. Mewett: Il y a des moutons noirs dans toutes les professions, même chez les juristes!

M. Woolliams: Cela ne s'applique pas aux députés!

M. Peters: Quelqu'un disait l'autre jour que, si une loi est mauvaise, il faut l'appliquer strictement car c'est la meilleure façon de nous en débarrasser. Nous n'appliquons pas très rigoureusement les mesures relatives à l'avortement, et nous ne les faisons pas disparaître. Comment la loi pourrait-elle être amendée pour que cessent ces avortements illégaux qui se produisent par milliers?

M. Mewett: En facilitant l'obtention d'un avortement régulier et en infligeant les sanctions les plus sévères aux avorteurs illégaux. Bref, aborder l'ensemble de la question d'une façon différente de ce qui se fait actuellement. Le but est de mettre un terme aux activités des avorteurs illégaux et aux homicides qui s'en suivent. Et je crois que la seule façon d'y parvenir est de faciliter l'obtention d'un avortement légal. J'ignore comment rédiger le texte de loi mais c'est la situation que j'aimerais voir exister.

Le président: Monsieur Hogarth.

M. Hogarth: Le principe invoqué par le docteur Bourne émanait d'un principe de *common law* n'est-ce pas?

[Text]

Professor Mewett: Actually, no; it was an interpretation of the word "unlawful" in I think, The Offences Against the Person Act. It was an instruction to the jury.

Mr. Hogarth: But it arose out of a matter of justification, or excuse...

Professor Mewett: Yes.

Mr. Hogarth: And that went to the common law principle, where you have no *mens rea* because of justification or excuse?

Professor Mewett: Yes.

Mr. Hogarth: It is your suggestion that because the word "unlawfully" is absent in Section 237 such a defence would not arise?

Professor Mewett: I think it would; but there is a large body of opinion that says it would not.

Mr. Hogarth: Would you comment on the provisions of section 7, subsection (2) which reads:

(2) Every rule and principle of the common law that renders any circumstance a justification or excuse for an act or a defence to a charge continues in force...

and so on. Therefore, would not the Bourne principle of justification or excuse continue in force here?

Professor Mewett: But the Bourne case only arose because the word "unlawful" was contained in the Offences Against the Person Act, out of which Bourne was charged.

Mr. Hogarth: Yes; but my point is that if it goes to the matter of *mens rea*, and it is a matter of saving the woman's life, that is a matter of justification or excuse in England?

Professor Mewett: In England, yes.

Mr. Hogarth: So every principle of the English law, by virtue of Section 7—

Professor Mewett: English common law.

Mr. Hogarth: Yes; of justification or excuse—carries through into our law. And a person charged under Section 237 could raise the justification or excuse that Dr. Bourne raised?

[Interpretation]

M. Mewett: Non, non. Il s'agissait d'interpréter le mot «illicite», aux termes de cette Partie du Code qui traite des infractions contre la personne.

M. Hogarth: Il s'agissait de justifier...

M. Mewett: Oui.

M. Hogarth: Et tout ceci rejoignait le principe de la *common law* qui dit que là où il n'y a pas intention criminelle il n'y a pas de crime.

M. Mewett: Oui.

M. Hogarth: Est-ce que vous affirmez que parce que le mot «illicite» n'apparaît pas dans l'article 237 qu'il est impossible de recourir à une telle défense?

M. Mewett: C'est ce que je pense. Nombreuses sont les personnes qui ont une opinion contraire.

M. Hogarth: Que pensez-vous des dispositions de l'article 7 (2) qui dit:

(2) Chaque règle et chaque principe de la *common law* qui font d'une circonstance une justification ou excuse d'un acte, ou un moyen de défense contre une inculpation, demeurent en vigueur et s'appliquent...

Est-ce que le principe Bourne de justification ou d'excuse ne demeurerait pas en vigueur en ce cas-ci?

M. Mewett: Oui, mais le cas Bourne ne s'est posé que parce que le mot «illicite» figurait dans la *Loi relative aux infractions contre la personne* aux termes de laquelle il avait été accusé.

M. Hogarth: Sans doute, mais s'il s'agit d'intention criminelle, de *mens rea*, s'il s'agit de sauver la vie de la femme, il s'agit de justification, ou d'excuse, tout au moins en Angleterre.

M. Mewett: Oui, en Angleterre.

M. Hogarth: Tout principe de la Loi anglaise aux termes de l'article 7...

M. Mewett: De la *common law* anglaise.

M. Hogarth: Tout principe de justification ou d'excuse, fait partie de notre loi. Ainsi, une personne accusée aux termes de l'article 237, pourrait invoquer l'excuse qu'avait invoqué pour se défendre le Dr. Bourne.

[Texte]

Professor Mewett: No. As I say, this is my view; It is not the view of some people. He could raise the defence of lack of *mens rea*.

Mr. Hogarth: Yes.

Professor Mewett: Yes; but then the question arises what is the *mens rea* which is required in Section 237? My view is that you could argue that the *mens rea* which is required in Section 237 is a mere mental element going to knowledge that you are performing an operation. It does not go to the

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motive for which you perform the operation. Whereas, if you include the word "unlawful" you make it quite clear that *mens rea* covers not only knowledge that you are performing an operation but also the motive for which you are performing it—that is, to save the life of the mother.

Mr. Hogarth: I see your point; but your suggestion is that there is a body of opinion on each side of that fence.

Professor Mewett: Yes.

Mr. Hogarth: Therefore, some aspects of Section 237 should be cleared up?

Professor Mewett: Yes.

Mr. Hogarth: A doctor who is in the difficult position of being asked to perform an abortion and is firmly of the belief that the woman is going to die if he does not is in the difficult position at this time that he has to perform the operation and later take his chances before a jury?

Professor Mewett: Yes.

Mr. Hogarth: The effect, surely, of the amendment to the Criminal Code in the Omnibus Bill is that he no longer has to take his chances before a jury; that he can get legal justification before the operation is performed?

Professor Mewett: Quite right.

Mr. Hogarth: You said that the proposed amendment does nothing?

Professor Mewett: Yes.

Mr. Hogarth: Do you not think that is a great service to the medical profession?

Professor Mewett: Not when you realize that there never has been a prosecution of a doctor for a therapeutic abortion in Canada. In other words, the test of whether or not

[Interprétation]

M. Mewett: Je ne pense pas. En tout cas, c'est mon avis; ce n'est pas l'avis unanime, j'en conviens. Il pourrait également mentionner l'absence de *mens rea*.

M. Hogarth: Oui.

M. Mewett: Mais il faudrait alors savoir en quoi consiste cette *mens rea* aux termes de l'article 237. Personnellement je crois qu'il suffirait de savoir que l'on procède à une opération. Il ne s'agit pas d'invoquer le motif sur lequel est fondé l'intervention chirurgicale en question. Si vous ajoutez le mot «illicite», il

devient évident qu'il n'est plus uniquement question de la connaissance du fait que l'on pratique une intervention, mais également du motif invoqué, c'est-à-dire sauver la vie de la mère.

M. Hogarth: Je saisis votre point. Mais vous dites que les opinions sont partagés?

M. Mewett: Oui.

M. Hogarth: En ce qui concerne certains aspects de l'article 237, il faudrait donc préciser ce que l'on veut dire?

M. Mewett: Oui.

M. Hogarth: Ainsi donc, le médecin qui est prié de procéder à un avortement et qui sait que la femme va mourir s'il n'opère pas doit tenter l'intervention et risquer, par la suite, d'avoir à répondre de son acte devant un jury.

M. Mewett: Oui.

M. Hogarth: En somme, il s'agit donc de modifier la Loi de façon à le justifier légalement avant l'opération.

M. Mewett: C'est cela.

M. Hogarth: Vous dites que l'amendement projeté n'atteint pas ce but?

M. Mewett: C'est ce que je dis.

M. Hogarth: Ne pensez-vous pas que c'est un grand service à rendre aux médecins?

M. Mewett: Non, si vous prenez en considération le fait qu'aucun médecin n'a jamais été poursuivi pour avoir pratiqué un avortement thérapeutique, au Canada. En d'autres mots,

[Text]

Reg. v. Bourne applies in Canada has never arisen because the police do not prosecute doctors who perform *bona fide* abortions.

Mr. Hogarth: Be that as it may, the prosecution might lie.

Professor Mewett: It is possible. I entirely agree. Yes.

Mr. Hogarth: That is the reason that they disguise these operations as dilation and curetting, or even go so far as to say they are fertility tests. Is that not so?

Professor Mewett: Yes.

Mr. Hogarth: So the prosecution might lie?

Professor Mewett: Yes; but if the word "unlawfully" were included I think you would equally well relieve the medical profession of this difficult choice of having to lie or else run the risk of a prosecution.

Mr. Hogarth: To go back to my first point, if all we do is insert the word "unlawfully" he has got to stand before a jury and raise the justification after the act is done.

Professor Mewett: I think not. He has to make up his own mind from a medical point of view whether it is justified, and if it is he will not be prosecuted.

Mr. Hogarth: You cannot rely on that, because the prosecution might lie at the suit of a father or mother, and so on?

Professor Mewett: Yes.

Mr. Hogarth: So that does one great service; is that not so?

Professor Mewett: Yes; I would accept that.

Mr. Hogarth: Thank you very much.

The Chairman: Mr. Ritchie?

Mr. Ritchie: Mr. Chairman, I wish to question the Professor on the effect of this amendment on the problem of, threatened abortion and so-called inevitable abortion. Do you understand that it would require the panel to rule say, on an inevitable abortion?

Professor Mewett: Do you mean the proposed amendment?

Mr. Ritchie: Yes.

Professor Mewett: Yes, I think it would.

[Interpretation]

on ne peut dire que le cas Bourne s'applique au Canada parce que la police ne poursuit pas les médecins qui pratiquent des avortements de bonne foi.

M. Hogarth: La poursuite pourrait mentir.

M. Mewett: C'est exact.

M. Hogarth: C'est pourquoi on qualifie ces interventions de dilatation, de curetage, et même de tests de fertilité.

M. Mewett: Oui.

M. Hogarth: Donc, la poursuite pourrait mentir.

M. Mewett: Je crois que si le mot «illicite» était inclus, vous élimineriez ce choix qu'ont à faire les médecins, savoir mentir ou risquer une poursuite.

M. Hogarth: Mais j'en reviens à mon premier point. Si vous ne faites qu'ajouter le mot «illicite» le médecin doit se présenter devant un jury et s'appuyer sur cette justification une fois que l'acte a été posé.

M. Mewett: Je ne crois pas. Il doit décider, au point de vue médical, si l'intervention est justifiée et si elle l'est, il ne sera pas poursuivi.

M. Hogarth: Vous ne pouvez vous appuyer là-dessus parce que la poursuite peut mentir au bénéfice du père ou de la mère.

M. Mewett: Oui.

M. Hogarth: C'est tout de même un service qu'on rend à cette personne, n'est-ce pas?

M. Mewett: Oui.

M. Hogarth: Je vous remercie.

Le président: Monsieur Ritchie.

M. Ritchie: J'aimerais demander à monsieur Mewett quels effets cet amendement aurait sur ce qu'on appelle les avortements inévitables. D'après-vous, l'amendement signifie-t-il que le comité aurait à se prononcer sur un avortement inévitable?

M. Mewett: Vous parlez de l'amendement proposé?

M. Ritchie: Oui.

M. Mewett: Je crois que oui.

[Texte]

Mr. Ritchie: It would be almost unworkable in that particular condition, would it not?

Professor Mewett: Unless you could so apply Section 45 as to say, relative to surgical operations in general, that when an emergent situation arose, then you do not have to go through the provisions of Section 237. I think it is possible to argue, even with the amendments to Section 237, that this would not preclude a doctor, in an emergency situation, where there is no time to go through this procedure, performing the operation and being protected by virtue of Section 45 that is, an operation in good faith, and so on.

I am not very happy about that, but I think it is possible to argue that. If it is not possible then, of course, it puts the doctor in a very difficult position.

Mr. Ritchie: If this is necessary, it seems to me there could easily be a considerable number of deaths arising from this particular section.

Professor Mewett: Yes; because there is no provision for an emergency situation.

Mr. Ritchie: Yes.

Professor Mewett: I agree.

Mr. Ritchie: My second question relates to the panel of three doctors plus the attending physician. In my own Province of Manitoba Churchill has two doctors, and is lucky to have any. They are 400 to 600 miles from Winnipeg, and approximately 400 miles from the nearest large place. How will this Act affect these outlying posts?

Professor Mewett: I presume it will mean that that could not be an accredited hospital. In other words, it could not come under this section. You could not have an accredited hospital unless you had enough doctors to form a therapeutic abortion committee.

Mr. Ritchie: Therefore, in a practical way, these people in outlying areas could not obtain service that they would be entitled to merely by living in a larger centre?

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Professor Mewett: I agree. They could come to Winnipeg, I suppose.

Mr. Ritchie: But in emergencies these people may not have money for transportation. This would be a practical prevention.

Professor Mewett: I agree.

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[Interprétation]

M. Ritchie: Ce serait à peu près impossible dans cette condition particulière, n'est-ce pas?

M. Mewett: A moins que l'article 45 soit appliqué de telle sorte que, lorsqu'il s'agit d'intervention chirurgicale et que survient une situation d'urgence, point n'est besoin de respecter l'article 237. Je crois qu'il est possible de soutenir que, malgré les amendements à l'article 237, ceci n'empêcherait pas un médecin, dans un cas d'urgence et s'il n'a pas le temps de se conformer aux prescriptions de la Loi, de procéder à cette intervention chirurgicale tout en étant protégé par l'article 45 relatif aux interventions effectuées de bonne foi.

Je ne suis pas absolument enchanté de la solution retenue. Mais enfin, je crois qu'on peut soutenir ce point. Si ce n'était pas possible, évidemment le médecin se trouverait dans une situation fort difficile.

M. Ritchie: Il me semble que ceci pourrait entraîner un nombre élevé de pertes de vie.

M. Mewett: Oui, parce qu'aucune disposition ne dit qu'il doit y avoir urgence.

M. Ritchie: Oui.

M. Mewett: Je suis d'accord.

M. Ritchie: Ma deuxième question se rapporte à ce comité de trois médecins en plus du médecin traitant. La ville de Churchill, au Manitoba, ne compte que deux médecins. Churchill est située entre 400 et 600 milles de Winnipeg et à environ 400 milles de la municipalité importante la plus rapprochée. Comment ces municipalités éloignées sont-elles touchées par cette loi?

M. Mewett: Je suppose qu'il ne pourrait y avoir d'hôpital accrédité. Cet article ne pourrait pas s'appliquer parce qu'il ne peut y avoir d'hôpital accrédité s'il n'y a pas suffisamment de médecins pour former un comité de l'avortement thérapeutique.

M. Ritchie: Ces personnes qui demeurent dans des régions éloignées ne pourraient pas se prévaloir de ce droit qu'elles auraient si elles habitaient un centre plus important.

M. Mewett: D'accord. Mais elles pourraient évidemment aller à Winnipeg.

M. Ritchie: Elles n'ont peut-être pas les moyens de défrayer le coût des frais de transport. Il s'agirait d'un préventif.

M. Mewett: Je suis de votre avis.

[Text]

Mr. Ritchie: Do you think there would be some advantage in giving the college of physicians and surgeons and the attorney general in the various provinces some leeway to work out conditions for this type of emergency or circumstance?

Professor Mewett: My opinion, sir, to be honest, is that if you just insert the word "unlawfully" into Section 237 it will only be a very short period of time before each province has established their own procedures under the equivalent of the doctors' act, the medical services act, the public hospitals act, or whatever it might be, which is applicable to the conditions in each of the provinces. You may have a situation where Quebec, for instance, would have none, whereas Ontario would have a very complicated system of therapeutic abortion committees.

In other words—and this goes back to the point that was made earlier—the word "unlawfully" does in itself, I agree, put the doctor in a difficult position. But it becomes a medical question or an ethical question. As I say, it will be a very short period of time before this is remedied by appropriate provincial legislation in order to protect the doctors—for instance, as is done under the Public Hospitals Act of Ontario. In other words, from a medical point of view you would soon reach the stage where the situation is regularized to meet the conditions in each of the provinces, and this will happen if the Parliament of Canada is prepared to take that risk. I think it will happen but one cannot guarantee it.

Mr. Ritchie: In other words, the working of this proposed section would mean that large groups of our people—and admittedly they are scattered—would in effect be denied abortion privileges.

Professor Mewett: Yes, at the moment I think this is true. One must realize that abortion is not merely a question of federal jurisdiction; it is a complicated question of federal jurisdiction on the criminal level, but there is also the medical question which is really a provincial point of view. That is, how you work out the procedures once you have abandoned the criminal point of view.

So, if you just insert the word "unlawfully" and then leave it up to the medical profession in each of the provinces to work out as best they can from a medical and ethical point of view how they handle abortions you would avoid the situation which you outline. In other words, you could easily adapt the

[Interpretation]

M. Ritchie: Pensez-vous qu'il y aurait avantage à ce que le Collège des médecins et des chirurgiens et le procureur général des diverses provinces puissent disposer de certains pouvoirs discrétionnaires? Ne leur serait-il pas possible de préciser, ou de prévoir des conditions relatives à des cas d'urgence de ce genre?

M. Mewett: Pour être honnête, monsieur, je crois que si vous inscrivez simplement le mot «illicitement» à l'article 237, dans très peu de temps chaque province aura établi sa propre méthode de procéder aux termes de lois équivalentes à la loi sur les hôpitaux et à la loi sur la pratique de la médecine etc, ou quelle que soit la loi, qui seront particulière à chaque province. Par exemple, Québec n'en n'aurait pas où l'Ontario en aurait. Ou tout au moins un système très compliqué de création de ces comités d'avortement thérapeutique.

Voilà ce que je disais plus tôt. Le mot «illicitement» met, disons, le médecin dans une situation difficile. Cela devient une question de médecine ou d'éthique. Il prendra peu de temps aux provinces de fournir, par des lois provinciale appropriées, une protection pour les médecins comme fait l'Ontario à l'heure actuelle en vertu de la Loi sur les hôpitaux publics. En somme, il faudrait que chaque province régularise la situation dans son territoire, supposé évidemment que le parlement fédéral soit disposé à courir ce risque et c'est ce qui va se produire. Je crois que cela va se produire, mais personne ne peut le garantir.

M. Ritchie: En somme, cette disposition ferait en sorte qu'un grand nombre de Canadiens qui habitent des régions isolées ne pourraient pas profiter des dispositions de la loi.

M. Mewett: C'est exactement ce qui va se passer. On doit se rendre compte que l'avortement n'est pas simplement une question de juridiction fédérale. C'est une question compliquée de juridiction fédérale sur le plan criminel, mais il y a aussi le côté médical qui est une question d'autorité provinciale. Les procédures, modalités ressortissent aux provinces en dehors du point de vue criminel.

Si vous insérez simplement le mot «illicitement» en laissant aux médecins de chaque province la liberté de procéder selon qu'ils jugeront préférable du point de vue de l'avortement, il sera alors plus facile d'adapter le mot «illicite» aux diverses circonstances particulières à chaque province.

[Texte]

meaning of the word "unlawful" to the various provincial conditions which arise.

Mr. Ritchie: Do you think that a panel of three people plus the attending physician will materially change or help in the better surveillance of these indications for abortion as compared to the customary practice which I have been used to of the attending physician plus a colleague in good standing in the hospital?

Professor Mewett: On the one hand it will be an additional safeguard. On the other hand it will be an additional delay and an additional complication. I just cannot make a value judgment as to whether the additional safeguard is worth more than the additional delay and the additional complication, but I think there is something to be said on both sides.

Mr. Ritchie: The term "accredited hospital" means accredited by the Canadian Council on Accreditation. Is it not true that many hospitals are not accredited, especially the small rural hospitals?

Professor Mewett: I assume they may be accredited for this purpose. I assume a hospital can be accredited for the purposes of Section 237 without necessarily being accredited for teaching purposes, or something like this.

Mr. Ritchie: What is the criteria? The criteria for accreditation varies a great deal from hospital to hospital. Is that right?

Professor Mewett: Under subclause (6), though, it would be:

...in which diagnostic services and medical, surgical and obstetrical treatment are provided;

So I assume that the Canadian Council on Accreditation, for the purposes of Section 237, could accredit any hospital in which those services are provided.

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Mr. Ritchie: Up to the present, though, this hospital council has not been particularly concerned with this, and a large teaching hospital might not be accredited for doing a therapeutic abortion.

Professor Mewett: I agree.

Mr. Ritchie: Similarly, under their accreditation rules many smaller hospitals will always remain unaccredited.

Professor Mewett: Yes.

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[Interprétation]

M. Ritchie: Est-ce que vous pensez qu'un comité de trois personnes et du médecin, pourrait mieux faire respecter les dispositions de la loi plus de ce qu'en est le cas actuellement? Actuellement, on parle simplement du médecin avec l'aide d'un collègue reconnu à l'hôpital.

M. Mewett: Ça serait une sauvegarde supplémentaire, d'une part. Mais d'autre part, cela causera plus de retards et plus de complications. Je ne sais pas vraiment dire si la sauvegarde ou la précaution supplémentaire font plus que contre-balancer les inconvénients nés de la prolongation des délais. Mais je crois que les deux côtés ont de la valeur.

M. Ritchie: Quand on parle «d'hôpital accrédité» parle-t-on d'un hôpital accrédité par le Conseil canadien d'accréditation? Un grand nombre d'hôpitaux ne sont pas accrédités n'est-ce pas, un grand nombre de petits hôpitaux ruraux, n'est-ce pas?

M. Mewett: Je suppose qu'ils pourraient être accrédités à cette fin. Un hôpital pourrait être accrédité aux termes de l'article 237, sans être nécessairement accrédité par exemple, au point de vue d'enseignement médical, ou pour une autre raison de ce genre.

M. Ritchie: Quel est le critère de l'accréditation? Cela varie beaucoup d'un hôpital à l'autre, n'est-ce pas?

M. Mewett: Aux termes de l'alinéa (6), il s'agit:

...d'un hôpital...dans lequel sont fournis des services de diagnostic et des traitements médicaux, chirurgicaux et obstétricaux;

Je suppose donc que le Conseil canadien d'accréditation des hôpitaux pourrait accréditer aux fins de l'article 237 tout hôpital où ces services sont fournis.

M. Ritchie: Jusqu'à l'heure actuelle, ce conseil d'accréditation des hôpitaux ne s'est pas particulièrement inquiété de cette question, et un grand hôpital enseignant pourrait ne pas être accrédité en ce qui concerne l'avortement.

M. Mewett: Je suis de votre avis.

M. Ritchie: D'autre part, un grand nombre de petits hôpitaux ne seront jamais accrédités.

M. Mewett: Oui.

[Text]

Mr. Ritchie: Therefore would you not agree that for a large section of our population, particularly those people who live in more remote areas, are going to be denied abortions because there are no available accredited hospitals unless they journey to the larger centres.

Professor Mewett: I would put it higher than that; I would say they would be denied abortions which at the moment they can get.

Mr. Ritchie: Yes. So there is going to be a loss to these people who live in rural areas of a service which has been available to them since the country was formed.

Professor Mewett: Unless they can find a doctor who is prepared to act in his opinion medically, but unlawfully, yes.

Mr. Ritchie: Therefore a large number of people or doctors or hospitals, will presumably be breaking the law should they continue in the established custom they have been used to.

Professor Mewett: I think that is quite right, sir, yes.

Mr. Ritchie: I presume you would suggest that by changing the word "unlawfully" an accredited hospital might best be defined by the provincial authorities.

Professor Mewett: Yes, sir.

Mr. Ritchie: Thank you.

The Chairman: Mr. Deakon.

Mr Deakon: Mr. Chairman, I would like to ask Professor Mewett this particular question to tie in everything that has been said up until now. From what I have heard so far am I correct in saying, Professor Mewett, that the passing of these amendments to this legislation would in reality make it more restrictive than it is at present?

Professor Mewett: I do not know about other provinces but certainly that is true in Ontario.

Mr. Deakon: And more controllable than at present.

Professor Mewett: At the moment.

Mr. Deakon: And give greater protection to the qualified medical practitioners.

Professor Mewett: Yes, I think that is true.

Mr. Deakon: Thank you.

[Interpretation]

M. Ritchie: Donc, ne seriez-vous pas d'accord qu'un vaste secteur de la population, surtout ceux qui habitent des régions isolées, seront privés des possibilités d'avortement parce qu'il n'existe pas d'hôpital accrédité, à moins d'aller dans les grands centres.

M. Mewett: J'irai même plus loin. Je dirais qu'elles sont privées des avortements auxquels elles ont droit actuellement.

M. Ritchie: Oui, il y aura une perte pour ces gens qui habitent les régions rurales de services qui ont déjà été mis à leur disposition, depuis la formation de notre pays.

M. Mewett: A moins que l'on trouve un médecin qui est disposé à agir contre la loi, mais en se justifiant au point de vue médical.

M. Ritchie: Donc, un grand nombre de personnes ou de médecins ou d'hôpitaux enfreindront la loi s'ils continuent leur présente pratique.

M. Mewett: Je crois que ce que vous dites, monsieur, est très vrai.

M. Ritchie: Je suppose que vous allez suggérer qu'en changeant le mot «illicitement» un hôpital accrédité pourrait obtenir une meilleure définition des autorités provinciales.

M. Mewett: Justement.

M. Ritchie: Merci.

Le président: Monsieur Deakon.

M. Deakon: Monsieur le président, je voudrais poser une question au professeur Mewett. J'aimerais nouer tout ce qui a été dit jusqu'ici. Professeur Mewett, on nous a dit que si on adoptait cette mesure, ce serait plus restrictif qu'à l'heure actuelle?

M. Mewett: Je ne sais pas si ce sera le cas dans toutes les provinces, mais ce le sera surtout en Ontario.

M. Deakon: ... et plus contrôlable qu'à présent.

M. Mewett: Oui, pour le présent.

M. Deakon: ... et protéger mieux les médecins qualifiés.

M. Mewett: Oui, je crois que c'est vrai.

M. Deakon: Merci.

[Texte]

Professor Mewett: It would also delay it, and from a medical point of view that may or may not be desirable.

The Chairman: Mr. Valade.

Mr. Valade: First of all I would like to come back to a point raised by Mr. Hogarth. Mr. Hogarth said that this proposed amendment to Bill C-150 will further protect the medical act. I think there is also a reverse action to this; it may also lead to an abuse of abortion by the medical profession. It could do this, could it not?

Professor Mewett: You mean if you add "by doctors or unethical hospitals"?

Mr. Valade: No, I am saying that Mr. Hogarth's position was that the presently proposed amendment would protect the doctors from being prosecuted, as they would be if we do not accept this amendment. My point is that it also opens the door to very wide and free interpretation of the mother's health and the mother's life.

Professor Mewett: Yes.

Mr. Valade: I think this works both ways. I am not going to ask for your opinion on how extreme these things could become, but in my opinion this is not really a forceful argument in defence of this amendment.

Professor Mewett: Except that expressions such as "mental health", "health" or "life" are obviously subject to interpretation by the courts and one could assume that in time there will be judicial interpretation of what is meant by these terms, and while initially you are leaving it up to the medical profession to interpret it for themselves, I think eventually you will reach the stage where you will have judicial legislation which will clarify what is meant.

Mr. Valade: Yes, but presently this is not the case.

Professor Mewett: No.

Mr. Valade: It opens the door to this wide and free interpretation by the doctors. My other point, Professor Mewett, is that if this proposed amendment is accepted does it not put the doctors under pressure of being prosecuted if, for instance, there is refusal by

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a doctor to perform an abortion and there are certain consequences to the person? Under this amendment an individual could sue a doctor for damages, could he not?

[Interprétation]

M. Mewett: Cela créerait des retards, et du point de vue de la médecine, il se peut que ce ne soit pas opportun.

Le président: Monsieur Valade.

M. Valade: Je voudrais revenir à un point, celui de M. Hogarth. Est-ce que M. Hogarth nous dit que cet amendement vis-à-vis l'article C-150 protégera mieux les médecins. Mais il y a, n'est-ce pas, ici l'inverse? Est-ce que ça ne pourrait pas donner lieu à un abus des avortements par la profession médicale. Est-ce que ce n'est pas possible?

M. Mewett: Voulez-vous dire en ajoutant «par des médecins ou hôpitaux sans conscience»?

M. Valade: Non. Selon M. Hogarth, l'amendement actuel protégerait les médecins contre les risques de poursuite, comme ils le seraient si nous n'adoptons pas le présent amendement. Pour moi, je prétends que cela, à l'inverse, ouvre la porte à toutes sortes d'abus par une interprétation très littérale de la santé de la mère ou de la vie de la mère.

M. Mewett: Oui.

M. Valade: Je crois que cela peut avoir un double effet. Je ne vous demande pas votre opinion à ce sujet, mais je crois que ce n'est pas un argument très solide pour défendre cet amendement.

M. Mewett: Sauf que ces expressions, «santé mentale», «vie», «santé», etc. sont évidemment assujetties à l'interprétation des tribunaux. Et on peut supposer qu'on finira par avoir des interprétations judiciaires du sens de ces expressions. Bien qu'à l'origine on laisse les médecins libres d'interpréter la chose comme ils le désirent. Je crois qu'avec le temps, on finira par avoir une jurisprudence.

M. Valade: Mais actuellement ce n'est pas le cas.

M. Hewett: Non.

M. Valade: Cela ouvre la porte à une interprétation très libérale de la part des médecins. Un autre point, professeur Mewett, c'est que si l'amendement était adopté, est-ce que ça n'expose pas les médecins qui refuseraient de pratiquer un avortement, est-ce que cela

ne les expose pas à des poursuites, si le médecin refusait, par exemple, de pratiquer un avortement, est-ce que dans certains cas, cet amendement ne permettrait que l'on poursuive le médecin, en dommages-intérêts?

[Text]

Professor Mewett: It is certainly possible, sir, but that of course would depend upon the provincial law on assault and battery and negligence, and they should not be affected by the provisions of the criminal law.

Mr. Valade: I am not talking about negligence, I am talking about the refusal of a doctor to perform an abortion if this amendment were passed. There is a case that happened recently, I think it was in New York, where a person sued the doctor who refused to perform an operation on his wife, and he was fined and he had to pay damages to that person.

Professor Mewett: Yes, for negligence.

Mr. Valade: Not for negligence, because he refused to commit the medical act which the law provided. This may be negligence in legal terms, but with this amendment passed, this also opens this possibility for a person, I would say a husband who would sue a doctor because the doctor would not have performed the abortion and his wife might be mentally sick afterwards.

Professor Mewett: I think if the husband could prove that the doctor acted negligently—

Mr. Valade: I am talking about his refusal to perform the abortion. Would that be possible with this amendment?

Professor Mewett: I doubt it sir, because I do not think the criminal law would effect the civil right of action which somebody would have against a doctor.

Mr. Valade: This is my point, because in this amendment we are reviewing all of Sections 237 and 209, and there is no provision that gives the doctors protection against this possibility.

Professor Mewett: For not performing an operation?

Mr. Valade: For not performing an operation.

Professor Mewett: I think that would be *ultra vires* of the federal government. I do not think it can, because you are dealing there with civil liability. Here you are merely dealing with liabilities of a criminal nature.

Mr. Valade: But it is a possibility.

[Interpretation]

M. Mewett: Cela est possible, monsieur, mais cela évidemment dépend des lois provinciales. Sur les tentatives de voie de fait, la rixe et la négligence, et elles ne devraient pas être touchées par les dispositions du Code criminel.

M. Valade: Je ne parle pas de la négligence. Je parle du refus d'un médecin de pratiquer un avortement, si l'amendement était adopté. Il y a un cas récent, par exemple, à New-York, où une personne a poursuivi un médecin qui avait refusé d'opérer sa femme, et il a été condamné et il a dû payer des dommages à cette personne.

M. Mewett: Oui, pour négligence.

M. Valade: Il ne s'agissait pas de négligence, mais parce qu'il avait refusé d'exécuter l'acte médical prescrit par la loi. C'est peut-être de la négligence du point de vue juridique. Mais, si vous adoptez cet amendement, vous donnez également pied à la possibilité qu'une personne, un mari par exemple, puisse poursuivre un médecin parce que le médecin aurait refusé de procéder à l'avortement, et que sa femme pourrait éprouver des troubles mentaux par la suite.

M. Mewett: Je crois que si le mari pouvait prouver que le médecin avait été négligent...

M. Valade: Je parle de son refus de faire l'avortement. Ce serait possible en vertu de cet amendement?

M. Mewett: J'en doute monsieur, parce que je ne crois pas que le droit pénal toucherait au droit civil de poursuivre qu'une personne pourrait exercer contre un médecin.

M. Valade: C'est le point qui m'intéresse, parce que dans cet amendement nous étudions en entier les articles 237 et 209, et il n'y a pas de dispositions qui donne aux médecins une protection contre cette possibilité.

M. Mewett: Pour ne pas avoir fait l'opération?

M. Valade: C'est ce que je veux dire.

M. Mewett: Je pense que le gouvernement fédéral dépasserait ses prérogatives. Il s'agit ici d'une responsabilité civile. Ici, vous traitez seulement de responsabilités relevant du droit pénal.

M. Valade: C'est possible cependant?

[Texte]

Professor Mewett: I think it is a possibility that the provinces could, by extrapolation of the criminal law, say that therefore we have now introduced a concept of negligence of not performing an operation. I agree it is possible. But I think it is unlikely.

Mr. Valade: Next week I will have a witness from the medical profession who may bring up this point.

I will take another case, maybe a hypothetical case, but it is a case that could arise. I am thinking about the case where a woman would be pregnant and she would go to a doctor without the knowledge of her husband and the doctor would perform the abortion. This is not, of course, in the provisions right now. The consent of no one else is required, only the request of the person.

Professor Mewett: I do not think it even requires that.

Mr. Valade: It does not even require that? I believe the case could arise that if a husband learns afterwards that this abortion was performed, he could use this proposed amendment on page 34, Clause 14. This is about a homicidal act. I am not saying that it is not related, but I would like your opinion on this. Clause 14 on page 34 reads:

14. Subsection (2) of section 195 of the said Act is repealed and the following substituted therefor:

“(2) A person commits homicide when he causes injury to a child before or during its birth as a result of which the child dies *after becoming a human being*.”

Certainly this proposed section could be interpreted by a husband as allowing him to sue a doctor who had performed an abortion on his wife without his consent.

Professor Mewett: No, I do not think so, sir. I think Subsection (2) of Section 195 refers to inflicting injuries on the foetus while it is in the mother's womb.

Mr. Valade: Yes, or after.

Professor Mewett: The foetus is then

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extruded. The child is born and it dies as a result of the wounds inflicted when it was in the mother's womb.

Mr. Valade: Yes.

Professor Mewett: You are dealing with a situation where the doctor performs an abortion and kills the foetus.

[Interprétation]

M. Mewett: Il est possible que les provinces en extrapolant le Droit pénal, puissent conclure que désormais nous avons introduit l'idée de négligence pour ne pas avoir fait une opération. Je conviens que c'est possible mais je crois que c'est peu probable.

M. Valade: J'aurai comme témoin, la semaine prochaine, un médecin qui pourrait soulever ce point.

Voici un cas hypothétique, mais qui pourrait cependant se produire. Je songe au cas où une femme serait enceinte et s'adresserait à un médecin sans que le mari le sache. Le médecin fait l'avortement. Ceci, naturellement, n'est pas prévu dans les dispositions actuelles. Le consentement d'aucune autre personne n'est exigé, à part celui de la personne elle-même.

M. Mewett: Je crois qu'on n'exige même pas cela.

M. Valade: On ne demande même pas cela?

Je crois que le cas pourrait se produire où le mari, apprenant après coup que l'avortement a été fait, pourrait se servir de l'amendement proposé à la page 34, paragraphe 14. Il est ici question de l'homicide. Je ne dis pas qu'il y a relation, mais j'aimerais connaître votre opinion à ce sujet. Le paragraphe 14 à la page 34 se lit comme suit:

14. Le paragraphe (2) de l'article 195 de ladite loi est abrogé et remplacé par ce qui suit:

“(2) Commet un homicide, quiconque cause à un enfant, avant ou pendant sa naissance, des blessures qui entraînent sa mort *après qu'il est devenu un être humain*.”

Il est certain que le présent paragraphe pourrait être interprété par un mari pour fonder une poursuite contre un médecin qui aurait procédé à un avortement sur la personne de sa femme sans le consentement du mari?

M. Mewett: Je ne le pense pas. Pour moi, l'alinéa (2) de l'article 195 a trait aux lésions infligées à un foetus qui est encore dans le sein de la mère.

M. Valade: Oui, ou après.

M. Mewett: Le fœtus est ensuite expulsé.

L'enfant naît et il meurt des blessures infligées pendant qu'il était dans le sein de la mère.

M. Valade: Oui.

M. Mewett: Vous avez là un cas où le médecin fait un avortement en tuant le fœtus.

[Text]

Mr. Valade: Yes.

Professor Mewett: Section 195 would not apply to that situation.

Mr. Valade: That would not apply to that situation.

Professor Mewett: No. I mean if one is worried whether or not the husband, if there is a husband, has any rights or not—rights to his wife's body or rights to his child, his unborn child—is of course a policy question. But if you think he does, Clause 18 dealing with Section 237, on page 42 reads:

...who in good faith uses in an accredited hospital any means for the purpose of carrying out his intention to procure the miscarriage of a female person,...

I think one ought to at least insert "with the consent of that female person." Then whether or not you also say "and also with the consent of the husband where that female person is married" is, as I say, a policy decision. But certainly I think there ought to be consent of the mother in there.

Mr. Valade: In practice, cases where married women are pregnant and their husbands are unaware of it are very numerous. I am not making a judgment here, but these are the most numerous clients of the back-street abortionist.

Professor Mewett: Yes, I think that is probably right.

Mr. Valade: And also young unmarried girls. This is why I think there are flaws in this proposed amendment. This law is intended for the regular or normal cases whereby a husband and wife are both in agreement with the abortion procedure. But it does not take into consideration those cases of people who may be in a position in which they are forced to hide their situation. This is why I would agree with you that in this amendment, by adding the word "unlawfully" in Section 237, you will cover this situation better than by leaving it open.

Another point, professor. I do not think this is a technical matter. I think it is a medical matter, but I was just going to say that abortions are not, or very seldom are, urgency measures. An abortion is a planned, designed, and calculated procedure, and the urgency here is certainly not a very important point.

[Interpretation]

M. Valade: Oui.

M. Mewett: L'article 195 ne s'appliquerait pas dans ce cas-là.

M. Valade: L'article ne s'appliquerait pas à ce cas-là?

M. Mewett: Non. Voilà, si quelqu'un veut savoir si le mari, s'il y en a un, possède ou non des droits sur le corps de sa femme, ou des droits sur son enfant, ceci naturellement est une question de principe. Mais si vous êtes d'avis qu'il en possède, le paragraphe 18 de l'article 237, à la page 242, se lit comme suit:

... qui emploie de bonne foi, dans un hôpital accrédité, quelque moyen pour réaliser son intention de procurer l'avortement d'une personne du sexe féminin,...

J'ai l'impression qu'on devrait au moins parler du consentement de la personne du sexe féminin. Et, on pourrait peut-être ajouter ou ne pas ajouter, «avec consentement du mari» lorsque la femme en question est mariée. C'est une décision de principe. Mais, en tout cas, on devrait certainement exiger le consentement de la mère.

M. Valade: Dans la pratique, il arrive souvent que des femmes mariées soient enceintes à l'insu du mari. Je ne veux viser personne, mais ce sont justement là les clients qui sont les clients les plus nombreux de l'avorteuse de fortune.

M. Mewett: Oui, je crois que c'est probablement la vérité.

M. Valade: Avec les filles non mariées, évidemment. C'est en ce sens que l'amendement proposé comporte beaucoup de lacunes. La présente loi s'adresse aux cas ordinaires et normaux, alors que le mari et la femme sont tous les deux d'accord pour qu'il y ait avortement. Mais cela ne tient pas compte du cas des personnes qui sont obligées de dissimuler leur état. Sur ce point, je suis un peu de votre avis. Si on ajoutait le mot «illicitement» à l'article 237, on couvre mieux la situation qu'en laissant les choses dans une forme aussi indéfinie.

Il est un autre point que je voudrais soulever. Je ne crois pas que ce soit une question technique. Mais, j'allais dire que les avortements ne sont pas des interventions urgentes ou qu'elles le sont rarement. Les avortements sont généralement le terme d'un plan mûri longtemps d'avance. L'état d'urgence n'est certainement pas la question importante.

[Texte]

Professor Mewett: I think not, no. But I think one could envisage a situation where it is urgent.

Mr. Valade: Yes, in very rare cases. That is all I have to ask, Mr. Chairman.

The Chairman: Mr. MacGuigan.

Mr. MacGuigan: I wonder if the witness has any information about the number of abortions being performed in Canada. I have heard 800 mentioned as the number of therapeutic abortions being performed every year in Canadian hospitals.

Professor Mewett: The only information I have is that 87 therapeutic abortions were performed at one hospital in Toronto last year. That is all I know.

Mr. MacGuigan: But one could extend that, and I suppose 800 would be reasonable.

Professor Mewett: Yes.

The Chairman: Mr. Chappell.

Mr. Chappell: Professor Mewett, you have suggested the addition of the word "unlawfully" to Section 237. I discussed with you earlier whether that might not lead to others being allowed to perform the abortion.

Looking at the amendment to Section 237 that way for a moment, suppose one's wife is raped. She goes to her doctor and the doctor refuses, either for fear of a criminal charge, or for perhaps the greater fear that some of his brother doctors will accuse him of practising too close to the line. He is afraid to touch it. So he says, "You will be all right." Two weeks later the wife has a nervous breakdown, a serious one. She has to be confined to a hospital. Could you, sir, say that you could successfully defend that doctor if I sued him

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for failure to do what he ought to have done?

Professor Mewett: I cannot say that I could successfully defend him. I do not think that kind of black-and-white situation would arise. I think any doctor would say, "I am sorry, I cannot do it, but I will refer you to another doctor". And if about 10 doctors in turn said they would not do it, I think the chances are he would not have acted negligently. In other words, any sensible doctor, I think, would safeguard against that.

[Interprétation]

M. Mewett: Je ne crois pas, non. Mais on peut s'attendre à ce qu'il y ait des urgences.

M. Valade: Oui, dans de rares cas. Voilà, c'est tout ce que j'avais à dire.

Le président: Monsieur MacGuigan?

Mr. MacGuigan: Je me demande si le témoin a des renseignements sur le nombre d'avortements qui se font au Canada? J'ai entendu le chiffre de 800, qui serait le nombre d'avortements thérapeutiques actuellement pratiqués dans les hôpitaux du Canada?

M. Mewett: Tout ce que je sais, c'est qu'un hôpital de Toronto l'an dernier a procédé à 87 avortements thérapeutiques. C'est tout ce que je sais.

M. MacGuigan: On pourrait évidemment extrapoler; 800 me paraît un chiffre raisonnable.

M. Mewett: Oui, évidemment.

Le président: Monsieur Chappell?

M. Chappell: Professeur Mewett, est-ce que vous avez proposé d'ajouter le mot «illicitement» à l'article 237. J'en ai déjà discuté avec vous et nous nous demandions si cela ne pourrait pas donner le droit à d'autres personnes de procéder à un avortement?

Regardons l'amendement à cet article pendant un instant, l'article 237; supposons qu'une femme mariée se fait violer; elle se présente chez son médecin et le médecin refuse, soit par crainte d'une poursuite criminelle, soit parce qu'il craint qu'un certain de ses confrères l'accuse de pratiquer de la médecine flôrant l'illégalité. Il craint de se mettre au blanc; il dit donc à la femme: «Tout va bien se passer.» Deux semaines plus tard, la femme fait une dépression nerveuse, une dépression grave. On doit l'hospitaliser.

Est-ce que vous pourriez défendre avec succès ce médecin, si je le poursuivais pour ne pas avoir agi comme il aurait dû le faire?

M. Mewett: Moi, je ne sais pas si je pourrais le défendre avec succès. Je ne pense pas qu'une situation aussi tranchée pourrait se produire. Le médecin dirait: «Je ne peux pas le faire, mais je vous enverrai un autre médecin.» Si cette femme avait été voir une dizaine de médecins et que tous avaient refusé, il ne pourrait pas être accusé de négligence. Tout médecin se défendrait contre cela évidemment.

[Text]

Mr. Chappell: Let us suppose that in a town where there are 10 doctors the word passes: "Why should we stick our necks out? If the government will not stand up and take a firm stand and clear up this law we just will not do it." And it is fear.

Professor Mewett: Well, of course, the amendments are not going to help that situation very much.

Mr. Chappell: Does not the amendment make it clear that the person can go to an accredited hospital and that the doctors, if they decide to do it, need have no fear of a charge?

Professor Mewett: But not merely on the grounds that she has been raped.

Mr. Chappell: No, no, but if they think that this might lead to a nervous breakdown.

Professor Mewett: Oh, no, not might. I think it is a little more stringent than that. It is "would be likely".

Mr. Chappell: All right.

Professor Mewett: I would think that that is covered by "unlawfully" but we do not agree on that.

Mr. Chappell: My point is that regardless of the words of the section, the doctor might, under Section 237 with the word "unlawfully" added, hesitate to for fear the other doctors might criticize him for going too close to the line...

Professor Mewett: I agree with you.

Mr. Chappell: ...and he might be sued.

Professor Mewett: I would agree but might I just add that this will not be the situation if the provinces, through their medical professions, legislate ethically and medically when an abortion comes under the word "unlawfully", which is precisely what they have done in Ontario at the moment under the Public Hospitals Act. In other words, you take the word "unlawfully" and then you leave it up to the medical profession to draw their own guidelines as to what is meant by "unlawfully".

Mr. Chappell: Well, I put this to you then. Supposing it is left to the medical profession, or some act covering it, and Mr. Woolliams mentioned that perhaps the Canada Medical Act would cover it. Now you and I are not experts on how abortions can be brought about, but supposing for a moment that they

[Interpretation]

M. Chappell: Supposons que dans une ville il y a dix médecins et qu'on se dise pourquoi est-ce qu'il faudrait nous compromettre, si le gouvernement ne veut pas agir, si le gouvernement ne veut pas mettre la loi au clair, pourquoi agirions-nous?

M. Mewett: Mais, vos amendements ne vont pas régler un grand problème.

M. Chappell: Est-ce que l'amendement ne précise pas qu'elle peut aller dans un hôpital accrédité où le médecin peut opérer sans accusation?

M. Mewett: Oui, mais il ne s'agit pas de viol.

M. Chappell: Mais, si le médecin pensait que cela donnerait lieu à une prostration nerveuse.

M. Mewett: Non, non. Le médecin doit avoir une opinion beaucoup plus rigoureuse.

M. Chappell: Très bien.

M. Mewett: Il me semble que le mot illicite ou illicitement prévoirait le cas.

M. Chappell: Mais, ce que je veux dire, c'est ceci: quelles que soient les dispositions de la loi, il est impossible au médecin, en terme 237, si on ajoute le mot illicitement, hésiterait à agir de peur d'être critiqué par ses confrères pour la pratique illégale de la médecine.

M. Mewett: Je suis de votre avis mais...

M. Chappell: Il pourrait être poursuivi.

M. Mewett: Mais ce ne serait pas la situation si les provinces, par l'entremise de leurs médecins, légiféraient pour faire en sorte que l'avortement ne puisse plus être illicite dans les conditions prévues par la loi sur les hôpitaux. Ce serait aux médecins à préciser ce qu'ils entendent par illicitement.

M. Chappell: Alors, me permettez-vous de dire ceci: Si on s'en remet au médecin ou à la loi sur les médecins ou sur la pratique de la médecine, ni vous ni moi ne sommes spécialistes en ce qui concerne la façon dont on peut provoquer l'avortement. Supposons que l'avortement puisse être provoqué par des

[Texte]

could be brought about by padding, or certain series of exercises or massage, or pills—just supposing it can be—would you agree with me that the word “operation” would not necessarily include those words?

Professor Mewett: No, it would not. But Section 237 actually says:

...uses ...any means for the purpose of carrying out his intention...

It is wider than an operation.

Mr. Chappell: I agree with that.

Professor Mewett: The proposed subsection (4) of Section 237 says:

...any hospital, who in good faith uses in an accredited hospital any means for the purpose of carrying out his intention...

I agree that you could perform an abortion, you could procure a miscarriage otherwise than by an operation but I think the Code covers that.

Mr. Chappell: Well, not in the sense that I was dealing with it. First of all, if we go back to Section 237 with the word “unlawfully”, you have agreed with me that others outside of the medical profession might be allowed to perform the abortion.

Professor Mewett: In certain circumstances.

Mr. Chappell: Yes. It was suggested that perhaps the Canada Medical Act would lend the protection because it was an operation and would come under the doctors. Now my question is that if inducing the abortion by padding or exercise or massage or pills is not an operation, then it might not be protected by the Canada Medical Act.

Professor Mewett: This is quite possible. I would agree.

Mr. Chappell: Thank you.

Mr. Woolliams: I am interested in this one question that Dr. Ritchie brought up and I will try to summarize it. I think the point that we have to consider here in the Committee is, as you have said, that the new amendments are going to make it more restrictive. I think you have to take a look at page 43, proposed paragraph (5)(a), where it says,

The Minister of Health of a province may by order (a) require a therapeutic abortion committee for any hospital in that province,

etc., and then you come to page 44, proposed paragraph (6)(e)

[Interprétation]

massages, des exercices, des pilules, suppositoires, est-ce que vous conviendriez avec moi que les mots opérations ne viseraient pas ces possibilités?

M. Mewett: Non, l'article 237 dit:

...emploie ...quelque moyen pour réaliser son intention...

Il ne s'agit pas seulement d'une opération.

M. Chappell: Je suis d'accord.

M. Mewett: L'article 237 (4) dit:

...quelque hôpital, qui emploie de bonne foi, dans un hôpital accrédité, quelque moyen pour réaliser son intention...

On peut procurer ou provoquer l'avortement, sans opération, mais j'ai l'impression que le cas dont vous parlez est prévu.

M. Chappell: Non, pas précisément dans le cas que je pensais. Si vous revenez à 237 avec le mot illicite, vous conviendrez avec moi que d'autres que des médecins pourraient être autorisés à pratiquer l'avortement.

M. Mewett: Dans certaines circonstances.

M. Chappell: Oui. Ils ont donné à entendre que la loi sur la pratique de la médecine fournirait une certaine protection puisque l'avortement serait pratiqué par les médecins. Voici ma question: Supposons que l'on provoque l'avortement par les massages, les exercices, les pilules, etc., ce ne sont pas des opérations, il est impossible que cela ne soit pas visé par la loi sur la pratique de la médecine.

M. Mewett: Vous n'avez pas tort.

M. Chappell: Merci.

M. Woolliams: M. Ritchie a soulevé une question, je vais essayer de la résumer. Il faut quand même que l'on regarde la page 43, (5) a) où on dit:

Le ministre de la Santé d'une province peut, par ordonnance,

a) requérir un comité de l'avortement thérapeutique de quelque hôpital, dans cette province...

Ensuite, on arrive à la page 44, paragraphe (6) (e):

[Text]

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"therapeutic abortion committee" for any hospital means a committee, comprised of not less than three members each of whom is a qualified medical practitioner...

and I think the strong support for what you say the changes should be, rather than to have all this rigmarole of the committee, is that outside of the metropolitan areas and the larger centres you are not likely to find three doctors, you are not going to be able to set up a committee, so that the law is not going to serve the average man in those areas.

I think that is one of the great problems so that really what you are saying is that if we added the word "unlawfully" in Section 237 and then left the matter as it was, in spite of the problems that have been raised by my friends and colleagues around the table, the spirit of the Act and the problem which we are trying to cure would be better served. In other words it would serve the people as a whole rather than discriminate against a large segment of the population.

Professor Mewett: That is my view, sir, yes. In other words, the realization that you are concerned with the criminal law aspect of it and that others should be concerned with the medical aspect of it.

Mr. Woolliams: Then putting it positively, Mr. Chairman—and I am not being critical; I am just trying to bring out the facts and the law as it is—the way the words "board" and "accredited hospitals" and "therapeutic abortion committees" are defined on pages 43 and 44 discriminates against a large segment of the population of Canada.

Professor Mewett: It certainly could.

An hon. Member: That is with regard to abortion.

Mr. Woolliams: Yes, that is what I am talking about. That is what we are dealing with. This does not deal with anything else, I do not think.

Mr. Hogarth: Sir, have you any information as to how many accredited hospitals there are in Canada that fit that definition?

Professor Mewett: No, sir, I do not know.

Mr. Hogarth: So the only real problem with respect to the remoteness depends upon the number of accredited hospitals there are, does it not, and perhaps the number of doctors in a community?

[Interpretation]

«comité de l'avortement thérapeutique» d'un hôpital désigne un comité formé d'au moins trois membres qui sont tous des médecins qualifiés,...

Plutôt que de constituer un comité, il faudrait peut-être procéder d'une façon plus simple. En effet, en dehors des grands centres métropolitains, on trouvera difficilement trois médecins, on ne pourra pas créer un comité. Mais, en somme la loi ne va pas servir la moyenne des habitants de certaines régions.

Voilà un des grands problèmes. Ce que vous dites donc, c'est ceci: C'est que, si on ajoutait le mot, illicitement, à 237, en laissant les choses en état, malgré les problèmes soulevés par mes collègues ici, l'esprit de la loi serait respecté, nous chercherions toujours, nous résoudrions toujours le problème, en somme, nous servirions mieux la population dans son ensemble. Nous n'exigerions pas à une grande partie de la population un régime d'exception.

M. Mewett: C'est mon avis. En somme, c'est à vous à vous occuper de l'aspect pénal et à d'autres de s'occuper des aspects hygiène, santé, etc.

M. Woolliams: En somme, je ne voudrais pas critiquer mais, aux pages 44 et 45, vous définissez toutes sortes de mots, hôpital accrédité, médecins etc. En somme, on se trouve à imposer un régime d'exception à une grande partie de la population du Canada.

M. Mewett: C'est possible.

Une voix: Il s'agit bien seulement ici d'avortements thérapeutiques.

M. Woolliams: C'est ce dont je parle. On traite précisément de cette question.

M. Hogarth: Savez-vous combien il y a d'hôpitaux accrédités au Canada qui sont conformes à cette définition.

M. Mewett: Non, je ne sais pas.

M. Hogarth: Les seuls problèmes en ce qui concerne les régions éloignées dont parle M. Woolliams, cela dépend du nombre plutôt accrédité et peut-être du nombre de médecins dans telle ou telle localité.

[Texte]

Professor Mewett: Yes, sir.

Mr. Hogarth: So if there are a thousand accredited hospitals in Canada, that pretty well would cover the country as a whole, would it not?

Professor Mewett: Provided they are reasonably accessible, yes.

Mr. Hogarth: Well, hospitals generally are accessible to the public, is that not so?

Professor Mewett: There are places where they are not.

Mr. Hogarth: Well, I appreciate that, yes, but for instance thoracic surgery is not going to be performed in any doctor's office, is it?

Professor Mewett: No, I agree.

Mr. Hogarth: And that is performed generally throughout the country. So the whole thing depends on how many accredited hospitals there are and how accessible they are to the people.

Professor Mewett: Yes.

Mr. Hogarth: Thank you.

The Chairman: Is it the wish of the Committee to go on to other sections? The Professor would like to comment on other sections of the Code. Mr. Peters.

Mr. Peters: Back to the other section, Clause 14 proposed subsection (2), in your opinion does this affect the right of the doctor to do something about a child after it is born? Is this the intent if the child is, to use a simple term, a monster child?

Professor Mewett: Oh, no, I do not think so. I think that all those provisions are concerned with is the difficult problem—I am not sure that it is really a difficult problem but the lawyers have made it a difficult problem—of killing someone who is in the process of being born and whether you treat that as a murder; consequently there are these—I suppose to the ordinary person—excessively complicated provisions about killing a child in the act of birth, inflicting injuries on a child while it is in the womb and then the child dying after it is born, and killing the child after it is born. There is not any doubt that any of these amendments would affect the situation that a doctor could not kill a child once it is born, once it has become a human being.

Mr. Peters: This practice is very common, as I understand it. I do not know very much

[Interprétation]

M. Mewett: Sans doute.

M. Hogarth: Ainsi donc, s'il y a mille hôpitaux accrédités au Canada, cela, je pense, pourrait servir les besoins du pays tout entier, n'est-ce pas?

M. Mewett: A condition qu'ils soient des éléments accessibles.

M. Hogarth: Les hôpitaux sont généralement accessibles au public.

M. Mewett: Il y a des endroits où il le sont moins.

M. Hogarth: Supposons une chirurgie thoracique, cela ne peut pas se faire dans le cabinet du médecin.

M. Mewett: C'est vrai.

M. Hogarth: Alors, cette chirurgie se fait un peu partout dans le pays. Cela dépend en somme du nombre d'hôpitaux thérapeutiques et à quel point ils sont accessibles à la population.

M. Mewett: Oui.

M. Hogarth: Merci.

Le président: Voulez-vous parler d'autres articles? M. Mewett aimerait faire des commentaires sur d'autres articles. Monsieur Peters?

M. Peters: Je parle de l'article 14(2). Est-ce qu'il est relatif au droit du médecin est d'intervenir après la naissance de l'enfant? Si l'enfant est un monstre, pour m'exprimer en termes simples?

M. Mewett: Oh non, je ne le pense pas. Vous savez, toutes ces dispositions visent un problème difficile, ce n'est pas un problème difficile, mais les juristes l'ont transformé en problème difficile. Il s'agit de difficultés de tuer un enfant au moment où il naît. S'agit-il d'avortement, s'agit-il de meurtre? Il y a des dispositions très compliquées en ce qui concerne le meurtre d'un enfant pendant sa naissance. Infliger des lésions dans le sein de sa mère ou la mort de l'enfant après sa naissance. Il n'est pas douteux qu'aucune de ces modifications ne permet au médecin de tuer l'enfant après sa naissance.

M. Peters: C'est pourtant une habitude très répandue. C'est une question dont on parle

[Text]

about it and it is a hush-hush subject anyway, but...

Professor Mewett: Whether you let them live or not is much more common than whether you kill them.

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Mr. Peters: Yes, and we are not providing any protection for the doctor who makes that decision?

Professor Mewett: No.

The Chairman: Thank you, Mr. Peters.

Mrs. MacInnis (Vancouver-Kingsway): I came in late and if I go over the same ground, I beg your pardon, but going over this legislation it struck me that there is a great deal of detail in it which is not laid down for other professions in other regards. It seems to me that particularly when we get into the sections on accredited hospitals there is a great deal of telling the profession what they should do and exactly how they should do it.

Has the Committee this morning considered whether, by leaving out of the Code entirely any reference to abortion, the same objective could be achieved under the existing hospital acts in the different provinces, or is there something to be gained by having this in the Criminal Code?

Professor Mewett: The Committee did discuss the problem of eliminating abortion from the Criminal Code. But the difficulty is, of course, the back-street abortionist, so there has to be an offence of abortion. The problem is how you take out of the Code, if I may use the phrase, a bona fide abortion of some sort. What I was suggesting was that if you leave Section 237 exactly the way it is but include the word "unlawfully" you would then eventually, not immediately but eventually get to the position when each of the provinces medical professions would themselves set limitations on the meaning of the word "unlawfully".

Mrs. MacInnis (Vancouver-Kingsway): This is precisely what I am getting at. I understand similar legislation to this in the United States has just been considered and the authorities down there who have had witnesses appearing before them, have said that it will affect 4 per cent of the women who are in this situation. If this is only going to be 4 per cent legislation I am wondering if a more effective way in Canada would be to take it out of the Criminal Code. If so, could we secure the type of different measures required

[Interpretation]

peu, il est vrai, et que je connais mal.

M. Mewett: Décider si on va les laisser vivre ou pas c'est beaucoup plus fréquent que de décider si on va les tuer.

M. Peters: Cela ne touche pas du tout le droit du médecin d'agir.

M. Mewett: Non.

Le président: Merci, monsieur Peters.

Mme MacInnis (Vancouver-Kingsway): Je suis arrivée en retard, mais je m'excuse de répéter peut-être certaines choses qui ont été dites. J'ai relu la loi, il me semble qu'elle est pleine de détails, il y a toutes sortes de détails applicables au médecin ici qui ne s'appliquent pas du tout aux autres professions. On est en train de raconter ici très précisément aux médecins comment ils doivent agir et ce qu'ils doivent faire ou pas.

Est-ce que le Comité, ce matin, a songé à ne pas dire un mot de l'avortement dans le Code criminel? Est-ce qu'on n'arriverait pas aux mêmes résultats dans les diverses provinces aux termes des lois sur les hôpitaux? Est-ce qu'il y a quelque chose à gagner à laisser ces dispositions dans le Code criminel?

M. Mewett: Le comité avait parlé de la possibilité de faire disparaître l'avortement du Code criminel, mais le problème est qu'il y a quand même aussi le cas des avorteurs marrons. En somme, il fait viser l'avortement. Comment peut-on enlever du Code criminel les allusions à un avorteur régulier si j'ose dire.

Moi, je propose qu'on ajoute le mot «illicite» à l'article 237 sous sa forme actuelle, on finirait, un jour, pas tout de suite, mais un jour, à en arriver au point où les diverses professions médicales dans les diverses provinces, s'imposeraient elles-mêmes des limitations quant à la définition du mot «illicite».

Mme MacInnis (Vancouver-Kingsway): C'est précisément ce que veux dire. Des mesures analogues sont actuellement à l'étude aux États-Unis. Les autorités là-bas ont vu des témoins qui ont dit que c'est une mesure législative qui a touché 4 p. 100 des femmes qui se trouvent dans cette situation. Si cette mesure législative ne concerne que 4 p. 100 des femmes, je me demande s'il ne serait pas aussi utile de supprimer complètement ces dispositions du Code criminel. Dans ce cas, est-ce qu'on ne pourrait pas assurer le genre

[Texte]

by throwing it to the provinces to pass the exact type of regulatory legislation that is required in those provinces. Would that be an alternative method that would work?

Professor Mewett: I have suggested this would be a better method, but it does depend upon whether you have confidence in the medical professions of the provinces playing ball, if you like, or going along with it and doing it bona fide and properly. But if you did have that confidence I think it would be a very short period of time before there would be stringent medical and ethical limitations on when an abortion can be performed. Rather than trying to put it in criminal law language you put it in medical and ethical language, leaving it up to those people to decide the limitations, medically and ethically, on when an abortion is justified—but keeping within the criminal legislation that area that you want, namely the backstreet abortionist and the non-bona fide abortion.

Mrs. MacInnis (Vancouver-Kingsway): If we did leave it to the provinces to go into the detailed legislation what effect if any do you think that would have on the number of illegal abortions?

Professor Mewett: In itself perhaps some effect but not very much—unless it is made quite clear that “unlawfully” has a wider concept than it has in the Bourne type of decision or that it has in the past, which is merely of course saving the life of the mother, with certain variations from that, the health of the mother and so on. This is not of course the illegal abortion situation because even now there is no problem in those sort of women getting abortions fairly easily and fairly cheaply. I think the backstreet abortions will always be in connection with the unmarried woman or the married woman who just does not want any more children, and you are never going to solve the problem of the backstreet abortion so long as that remains the crucial problem of abortions. But whether you want to go that far or not is of course a policy decision.

Mrs. MacInnis (Vancouver-Kingsway): Thank you.

The Chairman: Mr. Deakon.

Mr. Deakon: Thank you, Mr. Chairman. Professor Mewett, if I understood you correctly, you were recommending that we add “unlawfully” to section 237.

Professor Mewett: Yes.

[Interprétation]

des différentes mesures à prendre en le remettant aux provinces afin d'adopter leur propre législation requise dans ces provinces. Serait-ce une contreposition valable?

M. Mewett: Ce serait, selon moi, une meilleure façon, mais cela dépend si on peut avoir confiance aux médecins dans les provinces, s'ils sont sérieux et qu'on puisse compter sur les médecins pour qu'ils fassent un travail sérieux. Si cette confiance existait, je ne doute pas que très vite les provinces imposeraient des restrictions médicales et morales très sévères à l'avortement. Au lieu de le considérer du point de vue du Code criminel, on le considère du point de vue moral et on laisse le soin de décider des limitations du point de vue médical et moral quand un avortement sera justifié, mais tout en conservant dans le Code criminel les dispositions relatives aux avorteurs marrons.

Mme MacInnis (Vancouver-Kingsway): Donc, si nous laissons aux provinces le soin de procéder par voie législative, quel effet est-ce que cela aura sur les avorteurs marrons illégaux?

M. Mewett: Dans une certaine mesure, peut-être y aurait-il un certain effet, mais ce serait assez réduit, à moins que l'on précise que «illicite» a un sens plus large que ce n'est le cas, par exemple, dans l'affaire Bourne ou s'il s'agit de sauver la vie de la mère avec certaines variantes, la santé de la mère, etc. Bien sûr, ce n'est pas un avortement illicite parce que même à l'heure actuelle, les femmes dont vous parlez peuvent assez facilement et à assez bon marché obtenir l'avortement. L'avorteur marron servira toujours la femme non mariée ou la femme qui ne veut plus d'enfants et on ne va jamais résoudre ce problème des avorteurs marrons aussi longtemps que les avorteurs de ce genre restent le point critique. Mais évidemment, c'est une question de principe, si vous voulez aller aussi loin ou pas?

Mme MacInnis (Vancouver-Kingsway): Merci.

Le président: Monsieur Deakon.

M. Deakon: Si je vous ai bien compris, professeur, nous devrions ajouter le mot «illicite» à l'article 237.

M. Mewett: Oui.

[Text]

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Mr. Deakon: You also mentioned that this word "unlawfully" was omitted from the amendments which were brought into the Code in 1953. That being the case, apparently "unlawfully" was inserted prior to 1953. What did the provinces do, if anything, to implement your proposition; that eventually law will devolve in time. What did they do prior to 1953 to rectify the situation?

Professor Mewett: Nothing.

Mr. Deakon: How can you expect them to do anything in the future?

Professor Mewett: Because I think in 1969 the problem of abortion is much more before the public, the problem is much more acute, and the provinces would in fact do something. But it requires faith in the provinces.

The Chairman: Is it the wish of the Committee that we pass on to other sections of the bill?

Some hon. Members: Yes.

Professor Mewett: Mr. Chairman, in respect of driving offences on page 35, I would just like to mention there is one very difficult problem, namely that sections 222, 223 and 224 create new offences: the offence of impaired driving, the offence of refusing to submit to a breathalyzer test, and the offence of driving with more than 80 milligrams of alcohol in one's blood. Each of those three sections made it an offence. For the first offence it is not more than \$500, for the second offence not more than three months, and for each subsequent offence not more than one year.

It strikes me, for instance, that the first time an impaired driver is picked up he becomes a first offender, the second time he might refuse to submit to a breathalyzer he would then be a first offender under that section, and the third time he submits and is charged and convicted of driving with more than 80 milligrams he would then be a first offender under that section, and with any amount of luck a driver, the way it is now worded, could in fact commit seven offences before he would be a third offender under any one of these three offences.

I think it would be preferable and I would suggest that somehow, the legislation be changed to make it clear that it is a first, second and third offence under any one of sections 222, 223 or 224, otherwise you are going to be able to manipulate in such a way as rarely to become a third offender. That was just one minor point.

[Interpretation]

M. Deakon: Le mot «illicite» a été enlevé des modifications apportées au code en 1953. Dans ce cas, ce mot a probablement été ajouté avant 1953. Qu'est-ce que les provinces faisaient, autant qu'elles faisaient, afin d'appliquer votre proposition que la loi sera dévolue avec le temps. Que faisaient-elles en 1953 pour rectifier la situation?

M. Mewett: Rien.

M. Deakon: Comment pensez-vous qu'elles vont agir maintenant?

M. Mewett: Je pense que l'explication est qu'en 1969 l'avortement intéresse beaucoup plus l'opinion publique. Le problème est plus actuel, et les provinces seraient poussées à agir. Il faut tout de même faire confiance aux provinces.

Le président: Est-ce que le comité désirerait que nous passions à d'autres articles du projet de loi?

Des voix: Oui.

M. Mewett: Monsieur le président, en ce qui concerne les délits de conduite à la page 35, je voudrais juste signaler un problème que les articles 222, 223, 224 créent de nouveaux délits: capacité de conduire affaiblie, refus de se soumettre au test de l'ivressomètre, par exemple, et le délit de conduite avec plus de 80 milligrammes d'alcool dans son sang. Dans chacun des cas, on prévoit une amende plus de \$500 pour le premier délit pour le deuxième 3 mois maximum, et pour les délits subséquents maximum un an.

Il me semble que le témoin qui est arrêté une première fois, il s'agit de conduite pendant que la capacité de conduire est affaiblie; la deuxième fois il pourra refuser de se soumettre à l'ivressomètre, la troisième fois qu'il est arrêté ayant plus de 80 mg d'alcool dans son sang, il serait donc un premier délinquant aux termes de cet article. Avec un peu de chance, le conducteur pourrait commettre sept délits avant d'avoir commis trois délits aux termes de la disposition.

Il serait mieux, je pense, de modifier la loi de façon à bien préciser que c'est le premier, deuxième ou troisième délit aux termes des articles 222, de 223 ou de 224 séparément. Autrement, on pourrait manipuler de façon à ne jamais se trouver en position d'être un délinquant pour la troisième fois.

[Texte]

On page 52—perhaps I could write you, Mr. Chairman, on this because it is a little more complicated—Clause 31 proposes to allow a peace officer after he has arrested an offender to release that offender with the intention that he is going to compel his appearance by way of summons. The Identification of Criminals Act only permits a police officer to take the fingerprints of any person if lawful custody and charged with an offence. If the amendment is passed as it is, and I think it is a good amendment, it will not be possible for a peace officer to take the fingerprints of an offender arrested with an indictable offence if he is going to release him with the intention of compelling his appearance by way of summons, because he can only take his fingerprints if he is in lawful custody and charged—and my view is that one does not become charged until the information is laid.

The result is that either peace officers are not going to release people or else they are going to take their fingerprints unlawfully. I think it would be a simple matter to include in amendment to the Identification and Criminals Act saying that any person in lawful custody, as a result of being arrested for an indictable offence, can have his fingerprints taken and so on.

Mr. Woolliams: Could I just pause on this one. This is a little concern of mine.

If you did amend it and say “any person being arrested for an indictable offence,” particularly in this bill where you can either lay a summary conviction offence or an indictable offence, it seems to me it could be used by

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police officers to fingerprint. That is the only problem I see.

Professor Mewett: By arresting him for an indictable offence...

Mr. Woolliams: Yes.

Professor Mewett: ...instead of for a summary conviction offence.

Mr. Woolliams: Yes, and then even if the offence is withdrawn you have him fingerprinted.

Professor Mewett: You have that problem in any case where you have an alternative whether it is a summary or an indictable offence. I am told that police are instructed to always arrest for an indictable offence but then it is not necessarily proceeded with on indictment, so that that sort of covers the policeman.

29931—4

[Interprétation]

Quant à la page 52, on pourra peut-être vous écrire à se sujet, parce que c'est un peu plus compliqué. La clause 31 propose de permettre à un agent de la paix, après arrestation, de libérer le prévenu en l'obligeant à comparaître plus tard sous forme de citation. La *Loi sur l'identification des criminels* ne permet à l'agent que de prendre les empreintes digitales d'une personne qui est déjà arrêtée et accusée d'un délit. Si l'amendement était adopté, je pense que c'est un bon amendement, il ne sera plus possible qu'un agent de la paix prenne les empreintes digitales d'un prévenu s'il doit le libérer en pensant pouvoir le citer plus tard pour l'obliger à comparaître. Il ne peut prendre ses empreintes digitales que s'il est arrêté et emprisonné et accusé, et à mon avis, il ne sera pas accusé avant une preuve des renseignements.

Le résultat de tout ceci c'est que soit l'agent de la paix ne libérera pas le prévenu ou prendra ses empreintes digitales illégalement. Il serait assez simple de modifier la *Loi sur l'identification des criminels* disant que toute personne ayant été arrêtée et accusée etc. pourra devoir donner ses empreintes digitales, etc.

M. Woolliams: Est-ce que je peux juste vous interrompre pour une petite question. Si vous modifiez la loi, une personne, aux termes de la loi, ne peut être accusée de violation de la loi sur simple déclaration de culpabilité ou de délit criminel. Il nous semble qu'ici l'agent de police pourrait se servir des

dispositions actuelles pour obtenir les empreintes digitales.

M. Mewett: S'il l'arrête pour violation de la loi.

M. Woolliams: Oui.

M. Mewett: Au lieu d'un délit criminel.

M. Woolliams: Oui, même si l'accusation était retirée, on pourrait recueillir les empreintes digitales.

M. Mewett: Vous avez le problème dans tous les cas où vous avez le choix s'il s'agit d'une violation de la loi ou d'un délit criminel. On me dit que les agents de police doivent toujours arrêter pour une violation de la loi mais ce n'est pas toujours suivie d'une accusation.

[Text]

Mr. Woolliams: I know, it seems to be giving just a little more power to the officers.

Professor Mewett: Yes; it is a converse situation. There is no provision in the Identification of Criminals Act for the destruction of the fingerprints of somebody who has been arrested and acquitted of an offence. I am told the practice at the Identification Bureau is that if an acquitted person writes and asks for them he can get them back, but if he does not write they keep them and it would be a simple matter, I think, to require the destruction of fingerprints of somebody acquitted of an offence.

Mr. Woolliams: Would you go so far, if your amendment were accepted, as to suggest also that a clause be put in so they would be destroyed...

Professor Mewett: Yes.

Mr. Woolliams: ...if they did not proceed either with the indictable offence and/or if they were acquitted?

Professor Mewett: Yes, and as I say they will do it only if they are asked to do it, and since very few people know that, they have a large file of fingerprints of people who have been acquitted.

The Chairman: Mr. Deakon?

Mr. Deakon: Professor Mewett, would you please tell the Committee what your ideas and opinions are regarding the compelling of a person to take a test?

Professor Mewett: Do you mean a breathalyzer test?

Mr. Deakon: That is right.

Professor Mewett: I am all in favour of it. I think it is absolutely essential. It seems to me it is not very much to ask somebody as a condition of driving, if a peace officer on reasonable and probable grounds thinks he is driving while impaired, to take a breathalyzer test. It does not go so far, for instance, as the English legislation and say a police officer can require a test without any reasonable and probable grounds, so one could argue, I think, that it does not go far enough. I do not think so; I think it is about the right compromise.

[Interpretation]

M. Woolliams: Je sais. Il semble que cela donne un peu plus de droits aux agents de police.

M. Mewett: Oui; la situation est réciproque. Rien dans la *Loi sur l'identification des criminels* ne prévoit la destruction des empreintes digitales de quelqu'un qui a été arrêté et acquitté. On me dit que le Bureau d'identification a l'habitude de rendre ses empreintes digitales à la personne acquittée qui écrit pour les demander; mais si la personne n'écrit pas, le Bureau les conserve, et il serait simple, je pense, d'exiger la destruction des empreintes digitales d'une personne acquittée.

M. Woolliams: Si la modification que vous avez proposée était acceptée, iriez-vous jusqu'à proposer aussi que l'on ajoute une disposition prévoyant la destruction des empreintes digitales...

M. Mewett: Oui.

M. Woolliams: ...dans le cas où il n'y aurait pas eu d'acte criminel et où ceux ou la personne aurait été acquittée?

M. Mewett: Oui. Comme je l'ai dit, le Bureau d'identification ne détruit les empreintes digitales que si on le lui demande, et, étant donné que très peu de gens sont au courant de cette possibilité, il y a un énorme dossier d'empreintes digitales de personnes qui ont été acquittées.

Le président: Monsieur Deakon?

M. Deakon: Monsieur Mewett, pourriez-vous dire au Comité quelles sont vos idées, vos opinions en ce qui concerne l'obligation qu'il y a pour les gens de se soumettre à un test?

M. Mewett: Vous voulez parler du test de l'ivressomètre?

M. Deakon: C'est cela.

M. Mewett: Je suis tout à fait en faveur de cette mesure. Je pense que c'est absolument essentiel. A mon avis, ce n'est vraiment pas trop demander à une personne, si l'agent de police a de bonnes raisons de croire qu'elle conduit en état d'ébriété, que d'exiger qu'elle se soumette au test de l'ivressomètre. Cette mesure ne vas pas aussi loin que les mesures adoptées, par exemple, en Angleterre, où un agent de police peut exiger un test sans motif valable. Ainsi, on pourrait même dire que cette mesure ne va pas assez loin. Mais je ne suis pas de cet avis; j'estime que c'est un juste compromis.

[Texte]

Mr. Deakon: Thank you.

The Chairman: Mr. Hogarth?

Mr. Hogarth: The witness can correct me if I am wrong, but the English legislation says that whenever a constable suspects that a person has alcohol in his body when he is driving he may be subjected to compulsory test, so he does have to have some grounds.

Professor Mewett: Yes.

Mr. Hogarth: Second, the English legislation makes the taking of a test or the quantity of alcohol, or alternatively the refusal to take the test, only summary conviction offences.

Professor Mewett: That is right.

Mr. Hogarth: I would like your comment on something that bothered me. In Section 223 on page 35, before the peace officer may demand that this test be taken he has to have reasonable and probable grounds to believe not that the man has alcohol in his body but that the man is impaired.

Professor Mewett: That is right.

Mr. Hogarth: If he has reasonable and probable grounds to believe that the man is impaired it would follow that he should lay a charge of impaired driving. Is that not so?

Professor Mewett: Yes; all right.

Mr. Hogarth: He will have evidence before him that this man's driving was impaired regardless of what his blood alcohol level might be.

Professor Mewett: Yes, but having reasonable and probable grounds for believing that the offence of impaired driving is committed does not guarantee a conviction, of course, whereas if you can take him down to the station and get a scientific analysis of the blood you guarantee a conviction, perhaps not of impaired driving, but of driving with more than eight parts.

Mr. Hogarth: I appreciate that, but in desiring to get drunken drivers off the road—and I think what the compulsory breathalyzer test is aiming at is to get people who might

[Interprétation]

M. Deakon: Merci.

Le président: Monsieur Hogarth?

M. Hogarth: Le témoin pourra me corriger si je me trompe, mais la loi anglaise stipule que lorsqu'un agent de police soupçonne qu'une personne au volant a de l'alcool dans le sang, il peut l'obliger à se soumettre au test obligatoire; il faut donc que l'agent de police puisse fournir des raisons valables.

M. Mewett: En effet.

M. Hogarth: De plus, selon la loi britannique, le passage du test et la découverte d'une certaine quantité d'alcool dans le sang, ou le refus de se soumettre au test, ne sont que des infractions punissables par déclaration sommaire de culpabilité.

M. Mewett: C'est exact.

M. Hogarth: Je voudrais votre avis sur une question qui me préoccupe. On a dit à l'article 223, à la page 35, que, pour avoir le droit d'exiger qu'une personne se soumette au test de l'ivressomètre, il faut que l'agent de police ait de bonnes raisons de croire non seulement que la personne a de l'alcool dans le sang, mais aussi que sa capacité de conduire est affaiblie.

M. Mewett: C'est exact.

M. Hogarth: S'il a de bonnes raisons de croire que la capacité de conduire de la personne est affaiblie, il devrait donc porter une accusation de conduite avec des facultés affaiblies. Est-ce bien cela?

M. Mewett: Oui, en effet.

M. Hogarth: Il aura des preuves que la capacité de conduire de la personne était affaiblie, quelle que soit la quantité d'alcool qu'elle ait dans le sang.

M. Mewett: En effet, mais le simple fait que l'agent de police ait de bonnes raisons de croire que la personne conduisait alors que ses facultés étaient affaiblies ne garantit pas une condamnation. Alors que si l'agent peut amener la personne au poste de police et obtenir une analyse de sang scientifique, il y a une garantie qu'elle sera condamnée, peut-être pas pour conduite avec des facultés affaiblies, mais pour conduite avec plus de huit parties d'alcool dans le sang.

M. Hogarth: Je le sais bien, mais ne pensez-vous pas que, si l'on veut empêcher les conducteurs saouls de circuler—or, l'objet du test de l'ivressomètre obligatoire est juste-

[Text]

be impaired or might be in the process of becoming impaired off the road—do you not

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think the peace officer should be able to demand the test without the necessity of going so far as to be required to have reasonable and probable grounds to believe he is impaired; that is to say, one more element such as a traffic offence or weaving on the road or something like that?

Professor Mewett: My personal opinion would be that it should be sufficient to say that where a police officer has reasonable and probable grounds for believing that the driver has consumed alcohol...

Mr. Hogarth: As in the English legislation.

Professor Mewett: ... but I am not sure that the public in Canada is ready for that.

Mr. Hogarth: I am not too sure they are not. Would you not take that one step further, though, and suggest it be only a summary conviction offence rather than an indictable one if it were .08?

Professor Mewett: I had not thought of that.

Mr. Hogarth: Thank you.

The Chairman: Mr. Murphy?

Mr. Murphy: Carrying on along the same line, Professor, first of all do you agree with me that not everyone who has 80 milligrams as defined in the Section in his bloodstream is impaired?

Professor Mewett: Yes, sir.

Mr. Murphy: Do you also agree with me that making the penalty for the offence of having 80 milligrams or more in one's bloodstream the same as the impaired driving offence has the effect of driving the court to find that everyone with .08 or more is impaired?

Professor Mewett: No, I do not think so, sir. I think the court would require external evidence of impairment besides the 80 milligrams, such as evidence of weaving or...

Mr. Murphy: I believe you are missing my point. If the accused is charged with .80 or more...

[Interpretation]

ment de retirer de la route les gens dont les facultés sont affaiblies ou sont sur le point de

le devenir—il faudrait que les agents de police puissent exiger de la personne qu'elle se soumette à un test sans avoir à donner des raisons valables qui lui fassent penser que les facultés de cette personne sont affaiblies, c'est-à-dire un élément supplémentaire tel qu'une infraction aux règles de la circulation, ou le fait de zigzaguer sur la route, ou quelque chose de ce genre?

M. Mewett: A mon avis, il devrait suffire de dire que lorsqu'un agent de police a de bonnes raisons de croire qu'un conducteur a bu de l'alcool...

M. Hogarth: Comme dans la loi anglaise.

M. Mewett: ... mais je ne suis pas certain que le public canadien soit prêt à accepter ce genre de chose.

M. Hogarth: Je ne sais pas. Ne voudriez-vous pas, toutefois, franchir cette étape supplémentaire, et proposer qu'une teneur en alcool de .08 soit considérée comme un délit punissable sur déclaration sommaire de culpabilité plutôt que comme un acte criminel?

M. Mewett: Je n'y avais pas songé.

M. Hogarth: Merci.

Le président: Monsieur Murphy?

M. Murphy: Dans le même ordre d'idées, monsieur Mewett, convenez-vous avec moi que quiconque a plus de 80 milligrammes d'alcool dans le sang, comme il est dit dans l'article, ne voit pas forcément sa capacité de conduire affaiblie?

M. Mewett: Oui, monsieur.

M. Murphy: Convenez-vous aussi que le fait de l'infraction qui consiste à avoir 80 milligrammes ou plus d'alcool dans le sang entraîne la même peine qu'une infraction de conduire avec des facultés affaiblies amène les tribunaux à considérer que quiconque a une teneur d'alcool dans le sang de .08 ou plus a des facultés affaiblies?

M. Mewett: Non, je ne suis pas de cet avis, monsieur. Je pense que le tribunal exigerait des preuves extérieures de facultés affaiblies, en plus des 80 milligrammes—par exemple, zigzaguer sur la route ou...

M. Murphy: Je ne pense pas que vous compreniez ce que je veux dire. Si l'on accuse la personne d'avoir dans le sang une teneur en alcool de 80 milligrammes ou plus...

[Texte]

An hon. Member: He is dead.

Mr. Murphy: I am sorry, I mean .08, and is convicted he is then liable to the same penalty as if he were convicted of impaired driving. Therefore, by making the penalty the same for the two offences are we not in effect saying that everyone who drives with .08 is impaired?

Professor Mewett: No, I think we are saying that they are at the same gravity. In other words, it does not matter whether you are impaired or whether you are driving with .08.

Mr. Murphy: Then would you agree with me that a person driving with .08 who happens to be one of those people that are not impaired should be considered to be impaired? Would you think that his offence is as grave as the person who is actually impaired?

Professor Mewett: If you make the policy decision that he increases the risk to other people merely because he has alcohol in his blood to a certain level, but that is a policy decision which you have to make. You have to say that people who have been drinking beyond a certain level, whether they are impaired or not, substantially increase the risk of injury or death or whatever it might be, and they increase it as much as somebody who is actually impaired.

In other words, you do not really care about the external manifestation; you care about the risk of injury which is substantially increased. However, as I say, one has to make the policy decision about whether you believe this is true or not. I personally believe that it is true. I believe it is not the impaired driver necessarily who increases the risk more than the person who is not impaired but has been, say, having a couple of drinks or whatever it takes to get you up to that level.

Mr. Murphy: I see, and you agree then with this penalty section which, in effect, provides in a second offence that you have to go to jail for 14 days even though you may not have been impaired.

Professor Mewett: Yes, sir, I do.

[Interprétation]

Une voix: Elle est morte.

M. Murphy: Pardon, je veux dire de .08 et que cette personne soit condamnée, on pourra lui infliger la même peine que si elle avait été accusée de conduire avec des facultés affaiblies. Donc, si la peine est la même pour les deux infractions, cela ne revient-il pas à dire que quiconque conduit avec .08 d'alcool dans le sang a des facultés affaiblies?

M. Mewett: Non, nous disons simplement que les deux délits sont aussi graves l'un que l'autre. Autrement dit, cela ne change rien, que vous conduisiez avec des facultés affaiblies ou avec .08 d'alcool dans le sang.

M. Murphy: Estimez-vous, alors, que la personne qui conduit avec .08 d'alcool dans le sang et qui se trouve être de ces gens que cela ne dérange pas doit être considérée comme conduisant avec des facultés affaiblies? Pensez-vous que le délit commis par cette personne est aussi grave que celui de la personne dont les facultés sont réellement affaiblies?

M. Mewett: Oui, si vous partez du principe que la personne qui a un certain niveau d'alcool dans le sang présente automatiquement un risque plus grand pour autrui; mais c'est là une décision de principe qui vous appartient. Cela suppose que vous déclariez que quiconque a consommé plus qu'une quantité donnée d'alcool, et que sa capacité de conduire soit ou non affaiblie, présente un risque beaucoup plus grand pour autrui, risque de causer un accident ou la mort de quelqu'un, et ce, autant que la personne dont les facultés sont réellement affaiblies.

Autrement dit, vous ne vous souciez pas réellement des manifestations extérieures; mais pensez au risque que cela présente pour autrui, et qui est sensiblement augmenté. Toutefois, je le répète, il faut prendre une décision de principe en déclarant si cela est vrai ou non. Pour ma part, j'estime que c'est vrai. Je ne pense pas que le conducteur dont les facultés sont affaiblies augmente nécessairement le risque davantage que la personne dont les facultés ne sont pas affaiblies, mais qui a pris, disons, un ou deux verres, ou quel que soit le nombre de verres nécessaire pour atteindre ce niveau.

M. Murphy: Je vois. Et vous êtes donc d'accord avec la sanction prévue, qui est, en fait, qu'à la seconde infraction, on condamne la personne à 14 jours de prison, même si sa capacité de conduire n'était pas affaiblie par l'alcool.

M. Mewett: Oui, monsieur.

[Text]

The Chairman: Mr. MacEwan?

Mr. MacEwan: I just have a couple of questions, Mr. Chairman. In answer to a question you stated that you are in favour of forcing a person to take this breathalyzer test.

Professor Mewett: Yes.

Mr. MacEwan: Do you know anything of this, Professor Mewett, that in some jurisdictions in some provinces if a person does not take this test his licence is suspended for a period of time? Is that correct?

Professor Mewett: Yes, sir.

Mr. MacEwan: Do you know in how many provinces this is done?

Professor Mewett: It is done in Saskatchewan, I know. I do not know of others.

Mr. MacEwan: Then I take it you do not think this is sufficient, having regard to modern-day traffic and offences and so on to...

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Professor Mewett: Yes, sir; as a matter of fact I think it is a better way out. I think it is preferable to remove the licence of somebody who refuses to take this test but I assume that Parliament has to make the decision that if the provinces will not do it this way then the Parliament of Canada has to do it within its criminal law jurisdiction. If you are saying that the Saskatchewan way is preferable, I agree with you; I think it is, if the provinces would do it.

Mr. Murphy: I have one final question on Section 223 (2) and it is a hypothetical one. If you were defence counsel, what would you envisage that would constitute reasonable excuse for a person not taking this breathalyzer test?

Professor Mewett: That he had asthma perhaps—I do not know.

Mr. MacEwan: I am looking for a few tips, that is all. Thank you.

An hon. Member: Surely injury would be one.

Professor Mewett: I presume injury would be one, yes.

[Interpretation]

Le président: Monsieur MacEwan?

M. MacEwan: Je n'ai que deux questions à poser, monsieur le président. En réponse à une question, vous avez dit, monsieur Mewett, que vous étiez en faveur de l'idée d'imposer le test de l'ivressomètre à une personne.

M. Mewett: Oui.

M. MacEwan: Savez-vous, monsieur Mewett, que dans certaines provinces, si une personne refuse de se soumettre à ce test, on suspend son permis de conduire pendant un certain temps? Est-ce bien cela?

M. Mewett: Oui, monsieur.

M. MacEwan: Savez-vous dans combien de provinces cela se fait?

M. Mewett: Cela se fait dans la Saskatchewan; mais je ne connais pas d'autres cas.

M. MacEwan: Je suppose, dans ce cas, que vous ne pensez pas que ce soit suffisant, étant donné le volume de la circulation de nos jours, le nombre des infractions, et ainsi de suite, de...

M. Mewett: Si, monsieur; à vrai dire, il me semble que c'est une meilleure solution. J'estime qu'il est préférable de retirer son permis de conduire à la personne qui refuse de se soumettre à ce test. Mais je suppose que le Parlement doit décider que si les provinces ne procèdent pas ainsi, c'est au Parlement du Canada d'imposer cette mesure dans le cadre de sa juridiction en matière de droit pénal. Si vous dites que le procédé suivi en Saskatchewan est meilleur, je suis de votre avis; c'est une solution bien préférable, mais encore faudrait-il que toutes les provinces en fissent autant.

M. MacEwan: J'ai une dernière question à poser sur le paragraphe (2) de l'article 223, et c'est une question hypothétique. Qu'est-ce qui serait, selon vous, une «excuse raisonnable» pour une personne qui refuse de se soumettre au test de l'ivressomètre?

M. Mewett: S'il avait l'asthme, par exemple? Je ne sais pas.

M. MacEwan: Je cherchais des petites idées. C'est tout, merci.

Une voix: Une blessure serait une bonne excuse.

M. Mewett: Oui, la blessure en serait une.

[Texte]

The Chairman: Mr. Hogarth.

Mr. Hogarth: On the matter of reasonable justification and excuse, suppose he says, "The police constable had no reasonable and probable grounds to believe I was impaired."

Professor Mewett: I think that would probably be reasonable justification and excuse, except of course the burden would be on him.

Mr. Hogarth: Yes, but suppose the police constable cannot give any evidence over and above that the man had driven his car, had consumed alcohol, and that he had demanded that he take a test. The only time that he can demand that is when he has reasonable and probable grounds to believe he is impaired.

Professor Mewett: That would be a defence.

Mr. Hogarth: It is going to be the standard defence, is it not?

Professor Mewett: Yes, I think so.

The Chairman: Mr. MacEwan.

Mr. MacEwan: Have you seen the breathalyzer used, professor?

Professor Mewett: Yes.

Mr. MacEwan: Someone has said that if a person, when taking a test, burps just before he begins that this throws the machine off?

Professor Mewett: I am told there are all sorts of ways in which you can cheat the machine, yes. But I am told if you have a trained operator it is getting more and more difficult to cheat the machine.

Mr. Hogarth: You would have a trained operator but also a trained accused by the seventh offence.

The Chairman: Gentlemen, it is almost 11.35. We have had a very good hearing this morning and I would suggest that we adjourn until 3.30 this afternoon, at which time we will carry on with firearms and lotteries.

Mr. Peters: Could I ask one question before we adjourn?

We had a lot of cases where a person, without any question, is drunk, and admits he is. If he pulls over to the side of the road and is still sitting in the automobile, would this

[Interprétation]

Le président: Monsieur Hogarth?

M. Hogarth: En ce qui concerne l'excuse ou la justification raisonnable, supposons qu'il dise que l'agent de police n'avait pas de raison de croire qu'il était dans l'impossibilité de conduire en étant sous l'influence de l'alcool?

M. Mewett: Ce serait probablement une justification raisonnable, sauf que ce serait à lui de le prouver.

M. Hogarth: Oui, mais supposons que tout ce que l'agent de police peut dire soit qu'il ait vu l'homme conduire, absorber de l'alcool, et qu'il lui ait demandé de se soumettre au test de l'ivressomètre. La seule fois où il peut l'exiger, c'est lorsqu'il a de bonnes raisons de croire que l'homme est sous l'influence de l'alcool.

M. Mewett: Ce serait une bonne façon de se défendre.

M. Hogarth: Ce sera la façon normale de défense, n'est-ce pas?

M. Mewett: Oui, je le pense.

Le président: Monsieur MacEwan?

M. MacEwan: Avez-vous assisté à un test d'ivressomètre, monsieur Mewett?

M. Mewett: Oui.

M. MacEwan: Quelqu'un m'a dit que si vous voulez neutraliser l'ivressomètre, il vous suffit de roter juste avant de vous soumettre au test.

M. Mewett: On sait qu'il y a toutes sortes de façons de tricher, mais on me dit aussi que si l'opérateur connaît bien son métier, il est de plus en plus difficile d'échapper à l'épreuve.

M. Hogarth: Vous auriez un opérateur bien entraîné, mais il faudrait aussi que l'accusé soit entraîné.

Le président: Messieurs, il est presque midi moins vingt-cinq. Nous avons eu une très bonne séance ce matin. Nous pourrions peut-être suspendre les travaux jusqu'à trois heures et demie de l'après-midi et nous continuerons l'étude de la question des armes à feu et des loteries.

M. Peters: Permettez-moi de poser une question avant la suspension des travaux. Nous avons eu plusieurs cas où une personne est sans aucun doute sous l'influence de l'alcool et l'admet. S'il range son automobile au bord de la route et y demeure, l'agent de

[Text]

still allow the officer to take him in and charge him?

Professor Mewett: Being in care and control, yes sir. What he could do is get out of the front seat and climb into the back seat, which is the safest way of doing it.

Mr. Woolliams: First of all, Mr. Chairman, through you, I would like to thank Professor Mewett for coming this morning. He certainly assisted all members of the Committee, even those of us who have not always agreed with his interpretations. He is a very scholarly gentleman and we really appreciate the contribution he has made.

I would think, with the consent of the Committee, that there would no reason to keep Professor Mewett in Ottawa any longer, unless someone else has something else they want to ask him.

The Chairman: Yes, this is my feeling, Mr. Woolliams.

I would like to add my personal thanks, Professor. You did an excellent job and the Committee appreciates it very much.

AFTERNOON SITTING

The Chairman: Gentlemen, we have a quorum. We are dealing with proposed section 98A (10) and (11) which were stood. This is the appeal section on page 17. Mr. Schumacher?

Mr. Schumacher: Mr. Chairman, would it be in order for me to move at this time an amendment to these provisions on the right to appeal on page 17 of the bill?

The Chairman: It might be helpful if we first heard observations from officials.

I was just telling Mr. Schumacher, who has indicated he might be proposing an amendment, that it might be helpful if you or Mr. Scollin first made a statement relative to this matter.

Mr. Turner (Ottawa-Carleton): We have tried to incorporate Mr. Schumacher's thoughts, or we hope we have, an amendment which he now wants to propose. After he proposes the amendment if any explanations are needed Mr. Scollin will be glad to speak to it.

[Interpretation]

police a-t-il quand même le droit de l'arrêter et de l'accuser de conduire sous l'influence de l'alcool?

M. Mewett: Oui. Il pourrait évidemment sortir de la banquette d'avant et aller s'asseoir sur la banquette arrière. Ce serait plus sûr.

M. Woolliams: Je voudrais remercier monsieur Mewett pour être venu nous voir ce matin. Cela a été utile à tous les membres du Comité, même à ceux qui n'étaient pas toujours d'accord avec lui. C'est une personne de grand savoir et nous apprécions la contribution qu'il a faite. Je pense qu'avec le consentement du Comité, il n'y aurait aucune raison de retenir M. Mewett plus longtemps à Ottawa, à moins que quelqu'un n'ait autre chose à lui demander.

Le président: C'est ce que je pense aussi, monsieur Woolliams. Je voudrais remercier à mon tour le professeur qui a bien aimablement répondu à nos questions. Vous avez fait de l'excellent travail, c'est pourquoi les membres du Comité vous en sont très reconnaissants.

SÉANCE DE L'APRÈS-MIDI

Le président: Messieurs, nous avons le quorum. Nous en sommes aux paragraphes (10) et (11) de l'article 98A proposé; nous les avons réservés. Ces dispositions, qui figurent à la page 17, ont trait à l'appel. Monsieur Schumacher?

M. Schumacher: Monsieur le président, est-ce que je pourrais proposer maintenant une modification à ces dispositions relatives au droit d'appel qui figurent à la page 17 du Bill?

Le président: Il serait peut-être utile d'entendre d'abord les observations des hauts fonctionnaires.

Je disais justement à M. Schumacher qui vient de manifester son intention de proposer une modification qu'il serait peut-être bon que vous-même ou M. Scollin fassiez une déclaration à cet égard.

M. Turner (Ottawa-Carleton): Nous avons essayé de tenir compte des idées de M. Schumacher dans une modification qu'il veut maintenant proposer, du moins nous espérons l'avoir fait. Après qu'il aura proposé sa modification, si vous avez besoin d'explications, M. Scollin sera heureux de vous en donner.

[Texte]

Mr. Schumacher: Mr. Chairman, I would like to move the following: That Bill C-150 be amended by striking out lines 1 to 42 on page 17 and substituting the following:

(10) Where the magistrate

(a) dismisses an appeal under subsection (6), the appellant, or

(b) allows an appeal under subsection (6),

(i) the Attorney General of Canada or counsel instructed by him for the purpose, if the person who took the action or decision that was appealed from to the magistrate is a person mentioned in paragraph (a) of subsection (1) of section 97, or

(ii) the Attorney General or counsel instructed by him for the purpose, in any other case,

may appeal to the appeal court against the dismissal, or against the allowing of the appeal, as the case may be, and the provisions of Part XXIV except section 724 and sections 733 to 742 apply, *mutatis mutandis*, in respect of such an appeal.

(11) In this section,

(a) "appeal court" means

(i) in the Province of Prince Edward Island, the Supreme Court,

(ii) in the Province of Newfoundland, a judge of the Supreme Court,

(iii) in the Provinces of Nova Scotia, New Brunswick, Ontario, Manitoba and British Columbia, the county court of the district or county where the adjudication was made,

(iv) in the Province of Quebec, the Court of Queen's Bench (Crown side),

(v) in the Province of Alberta, the district court of the judicial district where the adjudication was made,

(vi) in the Province of Saskatchewan, the District Court for Saskatchewan, and

(vii) in the Yukon Territory and Northwest Territories, a judge of the Territorial Court; and

(b) "magistrate" means a magistrate having jurisdiction in the territorial division where the applicant for a permit or registration certificate the issue of which has been refused, or the person whose permit or registration certificate has been revoked, as the case may be, resides.

[Interprétation]

M. Schumacher: Monsieur le président, j'aimerais faire la proposition suivante: que le Bill C-150 soit modifié par le retranchement des lignes 1 à 42, page 17, et leur remplacement par ce qui suit:

(10) Lorsque le magistrat

a) rejette un appel en vertu du paragraphe (6), l'appellant, ou

b) admet un appel en vertu du paragraphe (6),

(i) le procureur général du Canada ou un procureur constitué par lui à cette fin, si la personne qui a pris la mesure ou la décision dont il est fait appel devant le magistrat est une personne mentionnée à l'alinéa a) du paragraphe (1) de l'article 97, ou

(ii) le procureur général ou un procureur constitué par lui à cette fin dans tout autre cas,

peuvent interjeter appel de cette décision devant la cour d'appel et les dispositions de la Partie XXIV, à l'exception de l'article 724 et des articles 733 à 742 s'appliquent, *mutatis mutandis*, à l'égard de cet appel.

(11) Au présent article,

a) «cour d'appel» désigne

(i) dans la province de Terre-Neuve un juge de la Cour suprême,

(ii) dans les provinces de l'Île-du-Prince-Édouard, de la Nouvelle-Écosse, du Nouveau-Brunswick, de l'Ontario, du Manitoba et de la Colombie-Britannique, la cour de comté du district ou du comté où le jugement a été prononcé,

(iii) dans la province de Québec, la cour du Banc de la Reine (juridiction criminelle),

(iv) dans la province de l'Alberta, la cour de district du district judiciaire où le jugement a été prononcé,

(v) dans la province de la Saskatchewan, la cour de district de la Saskatchewan, et

(vi) dans le Territoire du Yukon et les Territoires du Nord-Ouest, un juge de la cour territoriale; et

b) «magistrat» désigne un magistrat ayant juridiction dans la circonscription territoriale où réside l'auteur d'une demande de permis ou de certificat d'enregistrement dont l'émission a été refusée, ou la personne dont le permis ou le certificat d'enregistrement a été révoqué, selon le cas.

[Text]

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Mr. Chairman, I think...

The Chairman: I thought it would be helpful to the Committee to have Mr. Cantin read the amendment in French.

Monsieur Cantin donne lecture de cet amendement en français.

Mr. Gervais: Sir, what is the exact purpose of this amendment?

Mr. Schumacher: The purpose of the amendment is to allow appeals from the magistrate to the district court in Alberta, which happens to be in the court as it applies in other provinces, so that one does not have to go directly to the Court of Appeal, which calls for the very combersome procedure of preparing factums and appeal books. Also, the courts of appeal seem to be centralized in certain of the provinces and are a long distance away from the people affected.

This is further to the discussion we had a couple of meetings ago.

The Chairman: All those in favour of the amendment?

Mr. McQuaid: I have only one suggestion and it is purely a parochial one relative to Prince Edward Island. It is sometimes difficult to have appeals heard promptly in the Supreme Court because of a full docket. Would it be possible to allow appeal to the county courts in our province, where appeals could be heard much more easily and expeditiously?

Mr. John A. Scollin, Q.C. (Director, Criminal Law Section, Department of Justice): What has actually happened here is that, in substance, we have pulled out present Section 719, which deals with appeals in summary conviction matters. In Prince Edward Island the appeal is to the Supreme Court, and perhaps in Prince Edward Island it is not quite so much inconvenient to get to it as it might be in a larger province. You would not have the same problem in getting to Charlottetown.

Mr. McQuaid: There is no problem in getting to the centre where the court is sitting. The problem sometimes is to get your case

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brought on with reasonable expedition. The county court dockets are usually not nearly as full as those of the Supreme Court.

Mr. Schumacher: Yes. Why not?

[Interpretation]

Monsieur le président, je pense...

Le président: Il serait peut-être bon que M. Cantin donne lecture de cette modification en français.

Mr. Cantin reads this amendment in French.

M. Gervais: Est-ce que je peux demander à M. Schumacher le but précis de l'amendement?

M. Schumacher: Il s'agit de permettre un droit d'appel à un magistrat aux Cours de district en Alberta ou ailleurs, de façon à ne pas avoir à s'adresser directement à la Cour d'appel, avec sa procédure très compliquée pour la préparation de l'exposé des faits. De plus les cours d'appel semblent centralisées dans un certain nombre de provinces et fort éloignées des intéressés. En effet, nous avons discuté de la question lors d'une séance antérieure.

Le président: Ceux qui sont en faveur de l'amendement?

M. McQuaid: Je n'ai qu'une proposition à faire, et je prêche pour ma propre paroisse, l'Île du Prince-Édouard. Il est parfois difficile de faire entendre un appel rapidement à la Cour suprême parce que le rôle des causes est contesté. Ne serait-il pas possible d'interjeter appel auprès d'une des cours de comtés, dans notre province, car ce serait beaucoup plus facile et plus rapide de faire entendre la cause?

M. John A. Scollin, c.r., (Directeur de la section du droit criminel, ministère de la Justice): Ce qui s'est passé ici, c'est qu'en somme, nous nous sommes conformés à l'article 719 en ce qui concerne les droits d'appels après déclaration sommaire de culpabilité. Dans l'Île du Prince-Édouard il y a droit d'appel à la Cour suprême. Dans le cas de l'Île du Prince-Édouard, ce ne serait peut-être pas aussi incommode que pour d'autres provinces plus grandes. Vous n'auriez pas le même problème s'il s'agissait de Charlottetown.

M. McQuaid: Ce n'est pas une question de se rendre à l'endroit où siège la cour. Le problème est qu'il est parfois difficile de faire

inscrire sa cause aussi rapidement. Les Cours de comtés sont moins occupées que la Cour suprême.

M. Schumacher: Et pourquoi pas?

[Texte]

Mr. Turner (Ottawa-Carleton): We will change that, if Mr. Schumacher will accept that amendment to his amendment, to "appeal court" means (i) in the Province of Prince Edward Island, a county court"

Mr. Scollin: It is called the county court of the district.

Mr. Turner (Ottawa-Carleton): Is it the district court or the county court?

Mr. Scollin: The county court.

The Chairman: Shall the amendment to the amendment carry?

Some hon. Members: Agreed.

Amendment as amended agreed to.

Mr. Turner (Ottawa-Carleton): Why do we not just delete (i) and put Prince Edward Island down with Nova Scotia, New Brunswick, Ontario, Manitoba and British Columbia, where it is the county court, and do the appropriate renumbering? You may, of course, want a special paragraph for Prince Edward Island, which I would quite understand?

Mr. McQuaid: We would not mind.

Clause 6, proposed Section 98A (10) and (11), agreed to.

On Clause 13—*Permitted lotteries*.

The Chairman: This is the substantive clause pertaining to lotteries. We stood. Clauses 9 and 10.

Mr. Hogarth: I raised a point of privilege this morning and I do not want to repeat what I said because it is burdening this Committee with repetition. Would the Minister comment on whether or not, in the light of what I have suggested, the Crown would accept the suggestion that Section 92 as it now stands in the Criminal Code be incorporated into the new Bill insofar as it pertains to permits and certificates and the onus of proof?

Mr. Turner (Ottawa-Carleton): Mr. Chairman, we reiterate the interpretation we made of the law and our reliance on the Queen v. Talbot, but we would like to reserve this question and look into the full ramifications of re-inserting a provision similar to Section 92 subsection (1).

Mr. Hogarth: Mr. Chairman, on that basis may the firearms sections, generally, stand until such time as we can return and hear the Minister's opinion?

[Interprétation]

M. Turner (Ottawa-Carleton): Nous allons donc changer cela si vous voulez. Si M. Schumacher veut accepter cette modification de son amendement: «cour d'appel» désigne: (i) dans l'Île du Prince-Édouard, une «cour de comté.»

M. Scollin: On l'appelle la cour de comté du district.

M. Turner (Ottawa-Carleton): Est-ce la cour de district ou la cour de comté?

M. Scollin: La cour de comté.

Le président: Le sous-amendement est-il adopté?

Des voix: D'accord.

L'amendement modifié est adopté.

M. Turner (Ottawa-Carleton): Pourquoi est-ce que nous ne supprimons pas (i) en mettant l'Île du Prince-Édouard avec les autres provinces où il est question de cours de comtés? Et nous renuméroterons, à moins que vous vouliez un alinéa spécial pour l'Île du Prince-Édouard, ce que je comprendrais sans peine.

M. McQuaid: Cela nous est égal.

L'article 6 du bill relatif au nouvel article 98 a) (10) et (11) modifié du Code est adopté.

Article 13—*Loteries permises*.

Le président: Nous passons maintenant à l'article 13. Il s'agit de l'article de fond sur les loteries. Nous avons réservé les articles 9 et 10.

M. Hogarth: J'ai soulevé une question de privilège ce matin, je n'ai pas envie de répéter ce que j'ai dit. Je ne voudrais pas ennuyer le Comité. Je me demande si le ministre, à la lumière de ce que j'ai dit, voudrait nous renseigner si oui ou non la Couronne accepterait mon idée selon laquelle le présent article 92 du Code criminel soit incorporé au nouveau projet de loi puisqu'il a trait à la question des permis et des certificats et du fardeau de la preuve.

M. Turner (Ottawa-Carleton): Monsieur le président, je ne saurais que répéter notre interprétation de la Loi et le fait que nous nous fondons sur le cas la Reine contre Talbot, mais nous aimerions réserver cette question et étudier soigneusement toutes les conséquences de l'insertion d'un article analogue à l'article 92 paragraphe (1).

M. Hogarth: Est-ce qu'on pourrait alors réserver toutes les dispositions relatives aux armes à feu jusqu'à ce que le ministre nous ait donné son opinion?

[Text]

The Chairman: I doubt that we can stand the sections, but I think the Minister means the right to say that a section be reserved.

Mr. Hogarth: Yes; that is all I am seeking.

Clause 13, proposed Section 179A 1(a) and 1(b) agreed to.

The Chairman: An amendment has been proposed to 1(c) which appears at the top of page 32.

On Clause 13, proposed Section 179A 1 (c)—*Charitable on Religious Organizations*.

M. Cantin: J'aimerais proposer ici un amendement, à l'effet:

Que le Bill C-150 soit modifié

a) par le retranchement des lignes 21 et 22, à la page 32, et leur remplacement par ce qui suit:

'alinéas a) à g) du paragraphe (1) ou au paragraphe (4) de l'article 179, sauf en ce qui concerne un jeu de dés, de bonneteau, de planches à trous (punch board) ou de table à sous,'

b) par le retranchement des lignes 32, 33 et 34, à la page 33, et leur remplacement par ce qui suit:

'des alinéas a) g) du paragraphe (1) ou au paragraphe (4) de l'article 179, sauf en ce qui concerne un jeu de dés, de bonneteau, de planche à trous (punch board) ou de table à sous, si'

C'est là le texte de l'amendement que je propose.

Le président: Merci.

Mr. Turner (Ottawa-Carleton): This was an oversight in the drafting, Mr. Chairman. Perhaps the Members would care to refer to the Criminal Code, Section 179 subsection (1) paragraph (g). That is the Section which makes it a crime, generally, to conduct lotteries and which is being exempted by the Bill. You will notice (g) reads:

(1) Every one is guilty of an indictable offence and is liable to imprisonment for two years who—

(g) induces any person to stake or hazard any money or other valuable property or thing on the result of any dice game, three-card monte, punch board, coin table or on the operation of a wheel of fortune;

We want to bring the wheel of fortune back into one of the legitimate areas that can be

[Interpretation]

Le président: Je ne pense pas que nous puissions réserver tous ces articles, mais je crois que le ministre veut parler du droit de dire que tel article soit réservé.

M. Hogarth: Oui. C'est tout ce que je demande.

L'article 13 du Bill relatif au nouvel article 179 (A) 1) (a) et 1) (b) du Code est adopté.

Le président: On a proposé un amendement à l'alinéa 1) (c) au haut de la page 32.

L'article 13 du bill du nouvel article 179 (A) 1) (c)—*Organismes de charité ou religieux*.

Mr. Cantin: I wish to move an amendment at this point, to the effect that

Bill C-150 be amended as follows

A) by the striking out of lines 21 and 22, on page 32, and replacing them as follows:

(a) to (g) (1) or of (4) 179, save as far as concerning the game of dice, three-card trick, punchboard or coinboard,

B) by the striking out of lines 32, 33, 34 on page 33 and replacing them as follows:

(a) to (g) (1) or of (4) 179, save in respect of the game of dice, three-card trick punchboard or coinboard, if'

That is the text of the amendment I would like to move.

The Chairman: Thank you.

M. Turner (Ottawa-Carleton): Nous avons oublié quelque chose en rédigeant le projet de loi. Si on veut bien revenir au Code lui-même, article 179 (1)g), c'est cet article qui fait que l'organisation de loteries constitue un délit criminel, ce que nous voulons corriger par ce projet de loi. Toutefois, l'article 179 (A) paragraphe 1) (g) se lit:

(1) Est coupable d'un acte criminel et passible de deux ans d'emprisonnement, quiconque...

g) décide une personne à risquer ou hasarder de l'argent ou quelque autre bien ou chose de valeur sur le résultat d'un jeu de dés, d'un jeu de bonneteau (three-card monte), d'une planchette à poinçonner (punchboard), d'une table à monnaie (coin table), ou sur le fonctionnement d'une roue de fortune;

Nous voulons redonner une certaine légalité dans les jeux de loterie, à la roue de fortune.

[Texte]

run under a lottery scheme. By an oversight the wheel of fortune turning wheel was left out. All this does is bring this wheel of fortune back into the ball game.

Mr. McQuaid: What is three-card monte?

Mr. Turner (Ottawa-Carleton): I will show you how to play it sometime, Mr. McQuaid.

Clause 13, proposed Section 179A., subsection (1)(c) agreed to.

Mr. Woolliams: I was just wondering if I could ask a general question at this time because one of the fellows who is looking after this for us is not here.

Mr. Turner (Ottawa-Carleton): Your lottery expert is not here, you mean?

Mr. Woolliams: That is right.

Do these new amendments really make it possible now, providing the provinces go through the necessary procedure, for *Kinsmen* and like clubs to operate?

Mr. Turner (Ottawa-Carleton): Yes, as long as the purpose of the lottery or game is for charity and it is a charitable exercise, then what you say is right.

Mr. McQuaid: With a provincial licence?

Mr. Turner (Ottawa-Carleton): Yes, with a provincial licence.

Mr. Woolliams: Now I wonder if somebody could define, within some limitations, "charity". There are a lot of cases on this. What basically do you have in mind?

Mr. Turner (Ottawa-Carleton): You know, it is very much like the old Statute of Elizabeth found in the income tax law basically—for religious purposes, for anything involving the public benefit, hospitals, improvement of youth, community improvement. "Charitable" within the definition of this Statute includes those things. Of course, it is left to the interpretation of the attorney general and the local crown attorney, but generally speaking that is the definition.

Mr. Woolliams: Would they have to then declare, Mr. Chairman—

Mr. Turner (Ottawa-Carleton): By the way, if it is challenged, in the last analysis the

[Interprétation]

Nous avions oublié la roue tournante de la roue de fortune. Il s'agit tout simplement de remettre la roue de fortune en circulation.

M. McQuaid: Qu'est-ce que c'est qu'un jeu de bonneteau?

M. Turner (Ottawa-Carleton): Je vous montrerai un jour comment cela se joue, monsieur McQuaid.

L'article 13 du Bill, l'alinéa c) du paragraphe (1) de l'article 179A proposé est adopté.

M. Woolliams: Je me demandais simplement si je pouvais poser maintenant une question générale, car l'un des hommes qui s'occupent de cette question pour nous est absent.

M. Turner (Ottawa-Carleton): Vous voulez dire que votre expert en matière de loterie est absent?

M. Woolliams: C'est cela.

Est-ce que ces nouvelles modifications permettent maintenant, à condition que les provinces suivent la procédure normale, aux clubs *Kinsmen* et autres clubs de ce genre de fonctionner?

M. Turner (Ottawa-Carleton): Oui, du moment que le but de la loterie ou du jeu est à caractère charitable.

M. McQuaid: Il faut l'autorisation de la province?

M. Turner (Ottawa-Carleton): Oui, c'est cela.

M. Woolliams: Peut-être quelqu'un pourrait-il définir plus ou moins le terme «charité»? Il y a eu bon nombre de causes à ce sujet. Qu'entend-on exactement par là?

M. Turner (Ottawa-Carleton): Vous savez, c'est très semblable à la vieille loi d'Elizabeth, que l'on trouve dans la Loi de l'impôt sur le revenu—il s'agit avant tout de buts religieux, de tout ce qui met en cause l'intérêt public, hôpitaux, services à l'intention de la jeunesse ou de la collectivité en général, etc. Le terme «charitable», dans la définition de ce statut, porte sur tout cela. Évidemment, c'est au procureur général ou à son substitut régional qu'il appartient d'interpréter ces dispositions, mais c'est là la définition habituelle du terme.

M. Woolliams: Mais dans ces conditions, monsieur le président, est-ce qu'il leur faudrait déclarer...

M. Turner (Ottawa-Carleton): A propos, s'il y a contestation, ce sont, en fin de compte, les

[Text]

courts would interpret what charity means. "For the public benefit generally" I suppose is the widest definition I could give the Committee.

Mr. Woolliams: I will tell you why I asked this question. As you know, there are many fraternities that do work for the good of the community and for other charitable purposes. As we all know, they sometimes get into difficulty. Am I correct in assuming that they have to declare the purpose for which they wish to raise in money and that they cannot just build up a general fund? In other words, do the Kinsmen, the Rotarians and so on have to give the particular purpose for which they are holding a raffle or a lottery?

Mr. Turner (Ottawa-Carleton): I would imagine that that would be the type of term or condition that the provincial attorney general would attach to the permit. He would want to know what the purpose of the raffle, lottery or game was.

Mr. Woolliams: Thank you.

The Chairman: Mr. Guay.

• 1555

M. Guay (Lévis): Monsieur le ministre, est-ce que, parce que toutes les corporations sont constituées sans but lucratif, elles le sont dans un but charitable par le fait même?

M. Turner (Ottawa-Carleton): Non, on parle du but de la loterie, non du but de la corporation.

M. Guay (Lévis): On ne peut pas . . .

M. Turner (Ottawa-Carleton): Non, monsieur.

On Clause 13, proposed Section 179A., paragraph (d).

Mr. Hogarth: Is this about agricultural fairs?

The Chairman: Yes.

Mr. Hogarth: I would like to raise a point on this, Mr. Chairman.

For some years in Vancouver the Pacific National Exhibition in conjunction with its annual fair has conducted a lottery on the exhibition grounds during the whole course of the fair and prizes are awarded in an approximate sum of \$100,000. It has been questionable all along whether or not that was strictly legal in accordance with Section 179 as it stands now. In any event we have now particularized by this subsection under consideration and we have limited the amount of the exhibition's prizes to \$35,000. I think, Mr. Chairman, that was by oversight. I do not

[Interprétation]

tribunaux qui interprètent le terme «charitable». Je suppose que la définition la plus large que je puisse vous donner, c'est «dans l'intérêt du public en général».

M. Woolliams: Si j'ai posé cette question, c'est que, vous le savez, un grand nombre de confréries travaillent réellement dans l'intérêt de la collectivité en général et à d'autres fins charitables. Comme nous le savons tous, elles ont parfois des problèmes. Ai-je raison de supposer qu'il leur faut déclarer dans quel but elles veulent réunir des fonds et qu'elles ne peuvent constituer simplement en fonds général? Autrement dit, est-ce que les clubs *Kinsmen*, *Rotary* ou autres, doivent indiquer dans quel but particulier ils organisent une tombola ou une loterie?

M. Turner (Ottawa-Carleton): Je suppose que c'est le genre de condition que le procureur général de la province imposerait pour la délivrance d'une licence. Il voudrait connaître le but de la tombola, de la loterie ou du jeu.

M. Woolliams: Merci.

Le président: Monsieur Guay.

Mr. Guay (Lévis): Sir, does this mean that, because all the corporations are set up on a non-profit basis, they are by this very fact set up for charitable purposes?

Mr. Turner (Ottawa-Carleton): No. It is the purpose of the lottery we are discussing, not that of the corporation.

Mr. Guay (Lévis): We cannot. . .

Mr. Turner (Ottawa-Carleton): No, sir.

Sur l'article 13 du bill, alinéa d) de l'article 179 A proposé.

M. Hogarth: Est-ce que cette disposition a trait aux foires agricoles?

Le président: Oui.

M. Hogarth: J'aimerais faire une observation à ce sujet, monsieur le président.

Depuis quelques années, à Vancouver, la *Pacific National Exhibition* organise, dans le cadre de sa foire annuelle, une loterie sur l'emplacement de l'exposition, loterie qui dure pendant toute la période de la foire, et où l'on décerne des prix pour un montant de \$100,000 environ. On s'est toujours demandé si c'était véritablement légal, aux termes de l'article 179 sous sa forme actuelle.

En tout cas, nous avons maintenant précisé par le paragraphe qui est à l'étude, et nous avons limité le montant des prix décernés lors de l'exposition à \$35,000. Je pense, mon-

[Texte]

think that in moving this bill the Minister intended to let charitable organizations go without limit and restrict the amount of the Pacific National Exhibition or indeed any other exhibition.

In keeping with the policy, I would like to move that that clause be amended so that the amount of any lottery pertaining to an agricultural fair or exhibition be left in the discretion of the Lieutenant Governor in Council when he issues the licence. Accordingly I move that Bill C-150 be amended by striking out lines 47 and 48 on page 32 and lines one to 11 on page 33 and substituting the following:

section (4) of section 179; and

I think that has the effect of leaving within the discretion of the Lieutenant Governor in Council how much any agricultural fair can give away by way of lottery.

I might point out one difference. In the previous section the lottery had to be confined to the fair grounds; now the lottery tickets can be sold off the fair grounds—and that should be drawn to the attention of the Committee.

The Chairman: Thank you, Mr. Hogarth. Could you read it in French, Mr. Cantin?

M. Cantin donne lecture de l'amendement en français.

The Chairman: Thank you, Mr. Cantin.

Mr. Turner (Ottawa-Carleton): Mr. Chairman, when we reviewed Bill C-195 we took the \$10,000 limitation off the total value of all prizes that could be awarded by any charitable or religious organization and left that to the discretion of the provincial attorney-general when setting the terms of any licence or permit he issues. I think it would be consistent to allow the same thing to happen in respect of agricultural fairs. I am in the hands of the Committee but I certainly would be prepared to accept that amendment.

Clause 13, proposed Section 179A, paragraphs (1) (d) and (1) (e), as amended, agreed to.

Mr. Valade: Did you move the amendment to (e) already?

The Chairman: Yes, we have.

Mr. Valade: I am sorry but I was late. I would just like to know what the substance of the amendment was that we just passed.

[Interprétation]

sieur le président, que c'était par inadvertance. Je ne crois pas qu'en présentant ce projet de loi, le ministre ait eu l'intention de n'imposer aucune limite aux associations charitables et de restreindre le montant autorisé pour la *Pacific National Exhibition* ou toute autre exposition.

Conformément à nos principes, je voudrais proposer que l'on modifie cette disposition de manière que le montant autorisé pour toute loterie lors d'une foire ou d'une exposition agricole soit laissé à la discrétion du lieutenant-gouverneur en Conseil, au moment où il délivre la licence. Je propose donc: que le bill C-150 soit modifié par le retranchement des lignes 6 à 19, à la page 33 du bill, et leur remplacement par ce qui suit:

«(4) de l'article 179; et»

Je pense que l'effet en serait que le lieutenant-gouverneur en conseil pourrait décider quel montant une foire agricole peut donner sous forme de prix dans une loterie.

Je pourrais signaler une différence. Aux termes de l'article précédant, la loterie devait avoir lieu sur l'emplacement de l'exposition; maintenant on peut vendre les billets de l'emplacement de l'exposition. Le Comité devrait, je pense, le savoir.

Le président: Merci, monsieur Hogarth. M. Cantin pourrait peut-être donner lecture de la modification en français.

Mr. Cantin reads amendment in French.

Le président: Merci, monsieur Cantin.

M. Turner (Ottawa-Carleton): Monsieur le président, lorsque nous avons examiné le bill C-195, nous avons supprimé la limite de \$10,000 de la valeur totale des prix qui pouvaient être décernés par une association charitable ou religieuse, et nous avons laissé la décision du procureur général de la province au moment où il fixe les conditions de la délivrance de la licence ou du permis. J'estime qu'il serait logique de permettre la même chose en ce qui concerne les foires agricoles. Je m'en remets au Comité, mais, en tous cas, je serais assurément prêt à accepter la modification.

L'article 13 du bill, alinéas d) et e) du paragraphe (1) de l'article 179A proposé est adopté.

M. Valade: Avez-vous déjà proposé la modification à l'alinéa e)?

Le président: Oui.

M. Valade: Excusez-moi, mais je suis arrivé en retard. Je voudrais simplement savoir ce qu'est la substance de la modification que nous venons d'adopter

[Text]

Mr. Turner (Ottawa-Carleton): The substance of the amendment, as I understand it, is to take the limit of \$35,000 off the amount of prizes that can be given by an agricultural fair and make it consistent with eliminating the \$10,000 on the limit of prizes that can be awarded by any one organization, leaving both limits free to be set by the permit of the provincial attorney general.

Mr. Valade: Does the same apply to other kinds of lotteries also?

Mr. Turner (Ottawa-Carleton): Just the lotteries for charitable purposes of religious organizations and agricultural fairs as found in (c) and (d). You will see that there is a limit in (e) of any other type of lottery—the amount of the value of each prize cannot exceed \$100 and the amount of money paid for a ticket cannot exceed 50 cents. That is the La Ronde type of thing.

Mr. Valade: Could I ask the Minister if this legislation then would not take into consideration such lotteries as the City of Montreal lottery. This would not be allowed with this amendment. The limit would be \$35,000 or \$100,000.

• 1600

Mr. Turner (Ottawa-Carleton): A municipal lottery would have to fall under paragraph (b), where the government of a province can conduct and manage a lottery scheme. That would be subject to whatever limits the province sets on their own scheme. I will not use the words “wide open”, but...

Mr. Valade: Yes. That is my point, Mr. Chairman. Thank you very much.

Clause 13—Proposed Section 179A(2) agreed to.

On Clause 13, proposed Section 179A(3)

Mr. Valade: Mr. Chairman, I am sorry to be repetitious but is an amount fixed for the price of the tickets? Is this also being amended?

Mr. Turner (Ottawa-Carleton): It is just in paragraph (e), Mr. Valade, and at bazaars.

Mr. Woolliams: Just to clarify what Mr. Valade seems to be concerned about, if it is a government-operated lottery, such as a municipality—and I know you do not like this word—it is open, it is at the discretion of the provincial elements.

[Interpretation]

M. Turner (Ottawa-Carleton): Je crois comprendre que la modification a pour objet de supprimer la limite de \$35,000 sur le montant total des prix qui peuvent être décernés lors d'une foire agricole, tout comme on a supprimé la limite de \$10,000 sur les prix qui peuvent être décernés par une association quelconque. Dans les deux cas, on laisse ainsi le Procureur général fixer le montant maximum dans le permis qu'il délivre.

M. Valade: Est-ce que cela s'applique aussi aux autres genres de loteries?

M. Turner (Ottawa-Carleton): Seulement aux loteries à but charitable organisés par les associations religieuses ou par les foires agricoles, ainsi qu'il est stipulé aux alinéas c) et d). Vous verrez que pour tout autre type de loterie, l'alinéa e) établit des limites: le montant ou la valeur de chacun des prix décernés ne doit pas dépasser \$100, et le prix du billet ne doit pas dépasser 50 cents. C'était le cas à «La Ronde», par exemple.

M. Valade: Pourrais-je demander au ministre si ce projet de loi ne tiendrait pas compte de loteries comme celle de la ville de Montréal. Cet amendement ne permettrait pas ce genre de loteries. Il restreint à \$35,000 ou \$100,000.

M. Turner (Ottawa-Carleton): Il faudrait que les loteries municipales soient conformes aux prescriptions de l'alinéa (b), en vertu duquel le gouvernement d'une province peut organiser et gérer une loterie, sujet aux restrictions que les provinces seraient parfaitement libres de fixer. Je ne veux pas dire que tout serait permis, mais...

M. Valade: Voilà, c'est ce que je voulais dire, monsieur le président. Merci beaucoup.

L'article 13 du Bill relatif au nouvel article 179(A)(2) du Code est adopté.

L'article 13 du Vill relatif au nouvel article 179(A)(3).

M. Valade: Monsieur le président, je risque de me répéter mais est-ce qu'il y a un montant qui est fixé pour le prix du billet ou est-ce qu'on modifie cela aussi?

M. Turner (Ottawa-Carleton): C'est indiqué à l'alinéa (e), monsieur Valade, et à la rubrique des ventes de charité.

M. Woolliams: Pour éclairer ce qui semble préoccuper M. Valade. S'il s'agit, par exemple, d'une loterie organisée pour les municipalités. Je sais que tout ceci est très libéral. Cela relève du pouvoir discrétionnaire des administrations provinciales.

[Texte]

Mr. Turner (Ottawa-Carleton): It is within the discretion of the provincial attorney-general.

Mr. Hogarth: Mr. Minister, I am a little concerned about this. The provisions of Section 179(1) (a) to (f) are extremely broad and refer to "makes, prints, advertises or publishes", and so on. Let us assume that some authorized charitable organization in the province of Ontario—in Ottawa, for instance—is authorized to conduct a lottery scheme and then they advertise on television and it is broadcast into another province. Where do we stand with respect to that? Here is a prize example: the *Globe and Mail* circulates throughout the whole of Canada and it would extend invitations to participate in an Ontario lottery. Would that offend Section 179(1)(a)?

Mr. Turner (Ottawa-Carleton): Looking at it quickly, Mr. Hogarth, if the advertisement extends in any way beyond the provincial boundaries, strictly speaking it would be an offence.

Mr. Hogarth: I have a suggestion which you might consider for getting around this, because I am sure you do not want to stop advertising in a newspaper which circulates outside a province. Could we not insert a section to the effect that where it is extended or circulated outside a province that specific wording be used in the advertisement, publication or television broadcast that this applies only in the province. . .

Mr. Turner (Ottawa-Carleton): Surely the advertisement can specify that. Whoever draws up the advertisement will have to do so in such a way that it will not offend the law, just as you do when you have a public

• 1605

securities issue. You say, "This offer is not for circulation in the Province of Ontario or the Province of Alberta" or "These shares are not for circulation outside Canada".

The lottery advertisement could say, "This lottery is not available outside the Province of Ontario", and even if the paper were circulated in Montreal I think that would qualify it within the law. It would be up to the person drawing the advertisement and circulating it to see that he did not offend the extra-provincial prohibition in the province. I think the terms of the advertisement would cover it.

Mr. Woolliams: Suppose there were an advertisement in the *Financial Post*, which is a national publication—this is what Mr. Hogarth has in mind—concerning a lottery in

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[Interprétation]

M. Turner (Ottawa-Carleton): C'est laissé à la discrétion du procureur général des provinces.

M. Hogarth: Cela me préoccupe un peu. Les dispositions de l'article 179 (1) alinéas a) à f) sont extrêmement libérales. On parle de l'impression, de la publicité, des publications. Supposons qu'une organisation charitable autorisée de la province d'Ontario, ici à Ottawa par exemple, soit autorisée à organiser une loterie, qu'elle fait de la publicité à la télévision et que ce soit diffusée en dehors de la province. Où en sommes-nous dans ce cas-là? Voici un bon exemple. Le *Globe and Mail* est lu dans tout le Canada. Supposons qu'il invite les gens à participer à une loterie de l'Ontario. Est-ce qu'il serait capable d'un délit aux termes de l'article 179(1)(a)?

M. Turner (Ottawa-Carleton): A première vue, si la publicité dépasse la frontière provinciale, ce serait un délit selon une interprétation stricte de la Loi.

M. Hogarth: Je voudrais vous proposer un moyen d'éviter cette difficulté. Vous ne voulez tout de même pas empêcher la publicité dans un journal qui est vendu en dehors de la province. Est-ce qu'on ne pourrait pas introduire une disposition aux termes de laquelle la publicité diffusée en dehors de la province, par une publication ou une émission de télévision devraient préciser que cela ne vaut que pour la province?

M. Turner (Ottawa-Carleton): Oui, il est possible de le préciser. Le rédacteur de la publicité doit préparer sa publicité de façon à ne pas contrevenir à la loi. C'est exactement comme dans l'émission d'obligations publi-

ques. On doit préciser que ces titres ne doivent pas être mis en vente en Ontario ou en Alberta, ou en dehors du Canada. On pourrait agir exactement de même lorsqu'il s'agit de la publicité.

On pourrait dire que la loterie n'est offerte qu'aux résidents de la province d'Ontario, et même si le journal était vendu à Montréal, il n'y aurait donc pas d'infraction. C'est au préposé à la publicité et au rédacteur de voir qu'il n'enfreint pas cette disposition. Je crois que tout dépend de la façon dont la publicité est faite.

M. Woolliams: Supposons qu'on mette une annonce dans le *Financial Post*, qui est une publication nationale, au sujet d'une loterie en Alberta. On pourrait préciser que cette

[Text]

Alberta, it could say that this lottery or this advertisement only applies to Alberta. Do you think that would safeguard it?

Mr. Turner (Ottawa-Carleton): We have left this to provincial discretion. The provinces are entitled to regulate their respective lotteries. The person who is managing the lottery is taking a risk unless his advertising is drawn in terms that make it clear it does not operate within the other provinces. I do not know how much further you can spell it out or narrow it down.

Mr. Hogarth: The only other thing that concerns me is that people will not know the effect of the next subsection we are introducing, that is that if they send for tickets they are guilty of an offence. I think we may be creating some ineffective law here. For instance, if Mayor Drapeau's scheme is a lottery it would offend against these sections because he is sending these forms all over Canada. If that were to happen in a legitimate, authorized lottery in the Province of Quebec, people would not know that by responding they were committing an offence.

Mr. Turner (Ottawa-Carleton): I do not know whether they would read the Code, either. Do you think they would, Mr. Hogarth?

Mr. Hogarth: No, I do not think they would.

Mr. Turner (Ottawa-Carleton): I think we have made it clear that this is a provincial situation and that a lottery scheme should not take effect beyond the borders of a province. It must be made clear that any lottery scheme so drafted and so advertised should meet the provisions of the Code.

Mr. Valade: Mr. Minister, let us say, for example, that an advertisement on the French network in Quebec were carried in New Brunswick or Ontario.

If a province objected to the lottery and asked the CBC, or whatever system it was, not to allow the use of the airwaves for this purpose by virtue of this section it could force the CBC to refuse the advertisement, could it not?

Mr. Turner (Ottawa-Carleton): It might, but if the ad says that it is available only in the Province of Quebec the attorney-general of New Brunswick could then say, "That is fine; I do not mind it getting into Bathurst or Campbellton".

[Interpretation]

loterie ou cette publicité ne s'applique qu'à l'Alberta. Croyez-vous qu'il serait ainsi protégé?

M. Turner (Ottawa-Carleton): Nous nous en sommes remis à la discrétion des provinces. Les provinces peuvent réglementer les loteries. A moins que la publicité soit rédigée de façon à préciser qu'elle ne vaut pas pour les autres provinces, la personne qui dirige la loterie prend un risque. Je ne sais pas comment on peut le préciser davantage.

M. Hogarth: Une autre chose qui me préoccupe c'est que les gens ne comprendront pas l'effet du prochain alinéa que nous introduisons, à savoir que si on écrit pour avoir des billets, on est coupable d'un délit. J'ai l'impression que nous établissons ici une loi inapplicable. Par exemple, si le système du maire Drapeau est une loterie, elle constituerait un délit aux termes de ces articles puisqu'il expédie ses formules partout au Canada. Si cela se produit dans une loterie autorisée au Québec, les gens ne sauraient pas, qu'en répondant, ils commettent un délit.

M. Turner (Ottawa-Carleton): Je ne crois pas qu'ils lisent le Code, non plus. Qu'en pensez-vous, Monsieur Hogarth.

M. Hogarth: Je ne le pense pas non plus.

M. Turner (Ottawa-Carleton): Je pense que nous avons bien précisé que c'est une question qui relève désormais de la province et qu'une loterie ne doit pas s'étendre au-delà d'une province. Il faudrait mieux s'assurer que la publicité au sujet des loteries soit telle qu'elle n'enfreigne pas les dispositions du code.

M. Valade: Par exemple, s'il y a de la publicité en langue française qui est diffusée dans la province de Québec et qui est entendue au Nouveau-Brunswick ou en Ontario.

Supposons qu'une province s'oppose aux loteries et demande à Radio-Canada ou à d'autres réseaux de ne pas permettre que l'on fasse de la publicité à la radio et à la télévision, est-ce qu'elle ne pourrait pas forcer Radio-Canada de procéder ainsi en vertu de cet article?

M. Turner (Ottawa-Carleton): Peut-être, mais si la publicité dit que la loterie n'est offerte qu'à la province de Québec, le procureur-général du Nouveau-Brunswick laissera tomber ses objections.

[Texte]

Mr. Valade: I know, but this could be used as a device to in some way object to that type of publicity by another province.

Mr. Hogarth: This might well become very sensitive, Mr. Chairman, when two provinces start competing for the best lottery.

Mr. Turner (Ottawa-Carleton): Anybody who advertises nationally must be sure he meets the law in every province. There is nothing new in this.

Mr. Valade: Mr. Minister, I think we should follow the suggestion proposed by Mr. Hogarth. If there is a notice to the effect that the lottery applies only within a certain province, then perhaps we could meet the objections this way.

Mr. Turner (Ottawa-Carleton): Our view is that the law is clear and it is up to the advertiser to make sure he fits within the law.

Clause 13—Proposed Sections 179A(3) to (6) inclusive agreed to.

The Chairman: We will now go back to page 31, Clause 12.

An hon. Member: We have not dealt with horseracing yet.

• 1610

The Chairman: I am sorry, we will go back to clause 9 at the top of page 25.

Clauses 9 and 10 agreed to.

On Clause 12.

Mr. Turner (Ottawa-Carleton): This repeals the reference to bazaars which now appears in the new Bill.

Clause 12 agreed to.

On Clause 11.

Mr. Turner (Ottawa-Carleton): I am going to change some experts here. I am going to bring in some people from the Department of Agriculture because, as you know, horse racing is administered by the Minister of Agriculture. If I may be allowed to represent him, together with his officials, I might make an opening statement on racetracks. I know how Mr. Valade lights up . . .

Mr. Valade: I have no interest whatsoever, Mr. Minister.

Mr. Turner (Ottawa-Carleton): There have been a lot of horse races in Montreal and you have always survived, Mr. Valade.

Mr. Valade: In the Minister's riding.

[Interprétation]

M. Valade: Mais est-ce que l'on ne pourrait pas se fonder là-dessus pour s'opposer à ce genre de publicité de la part d'une autre province?

M. Hogarth: Lorsque deux provinces entrent en concurrence pour la meilleure loterie, cela pourrait devenir une cause de conflit.

M. Turner (Ottawa-Carleton): Chacun qui fait de la publicité à l'échelle nationale doit s'assurer qu'il respecte la loi de toutes les provinces. Il n'y a rien de nouveau à cela.

M. Valade: Mais, monsieur le ministre, si nous acceptons l'idée de M. Hogarth. Si on disait que la loterie ne s'applique qu'à telle province, il nous serait possible de rencontrer les objections.

M. Turner (Ottawa-Carleton): La loi est claire et c'est à celui qui rédige la publicité de s'assurer qu'il la respecte.

L'article 13 relatif à l'article 179A paragraphes 3 à 6 du code est adopté.

Le président: Nous revenons maintenant à la page 31, article 12.

Une voix: Pardon, nous n'avons pas encore parlé des courses de chevaux.

Le président: Je m'excuse, retournons à l'article 9 au haut de la page 25.

Les articles 9 et 10 sont adoptés.

Article 12.

M. Turner (Ottawa-Carleton): Cet article abroge la référence aux ventes de charité qui fait maintenant partie de ce Bill.

L'article 12 est adopté.

Article 11.

M. Turner (Ottawa-Carleton): Puisque j'ai des spécialistes ici, je vais faire venir ici des gens du ministère de l'Agriculture. Comme vous savez, les courses de chevaux sont administrées par le ministre de l'Agriculture. Je me permets de le présenter et de présenter ses fonctionnaires. J'aimerais faire une petite déclaration sur les pistes de course. La figure de M. Valade s'éclaire quand on parle de courses de chevaux!

M. Valade: Je ne m'intéresse pas aux courses de chevaux.

M. Turner (Ottawa-Carleton): Il y a eu de nombreuses courses de chevaux à Montréal et vous vous en êtes toujours tiré!

M. Valade: Et, dans la circonscription même du Ministre!

[Text]

Mr. Turner (Ottawa-Carleton): Gentlemen, Clause 11 repeals Section 178 of the Criminal Code and substitutes an entirely new section. The new subsection (1) represents, we believe, a marked simplification over its predecessor. This subsection makes the offence of keeping a common gaming house or a common betting house under Section 176, or a betting or a pool selling or a bookmaking under Section 177 not applicable to the situation set out in Section 178 which is horse racing and pari-mutuel betting.

Under the present subsection (1) there are involved rules relating to which associations may conduct race meetings at which there is pari-mutuel betting. Pari-mutuel betting under the present law is only permitted on racetracks by associations incorporated before May 19, 1947 and who were authorized to conduct race meetings with pari-mutuel betting before that date, or upon racetracks or associations incorporated after that date by special Act of Parliament or the legislature of a province.

The amendment, Mr. Chairman, will permit an association incorporated at any time:

...by or pursuant to an Act of the Parliament of Canada or of the legislature of a province, having as its purpose or one of its purposes the conduct of horse races.

to conduct race meetings with pari-mutuel betting provided that all relevant provisions of the Criminal Code relating to supervision are complied with. You have to read the new subsection (9) together with the new subsection (1).

• 1615

The number of days of racing per year and the number of races per day are set out in subsection (1) of the present legislation. The new subsection (1) in Bill C-150 simply states that the provisions of Section 178 and regulations made thereunder must be complied with by the association responsible for the race.

The number of races per day is dealt with in the new subsection (2). This policy, as I said, is set by the Department of Agriculture and as we move through the Clause, Mr. Chairman, I have with me Mr. Phillips and Mr. Pratt of the Department of Agriculture.

The Chairman: Mr. Valade?

Mr. Valade: Mr. Chairman, what are the essential changes in this amendment in relation to the present legislation?

The Chairman: Mr. Valade, it might be helpful if we went through the actual subsections and perhaps the officials could then comment on these in turn.

[Interpretation]

M. Turner (Ottawa-Carleton): Messieurs, l'article 11 rapporte l'article 178 du Code Criminel et le remplace par un article entièrement nouveau.

Le nouveau paragraphe (1) est beaucoup plus simple que l'article antérieur. Ce paragraphe ne s'applique pas aux conditions expliquées à l'article 176, ni aux discussions relatives aux tenanciers de tripots et précise les conditions dans lesquelles on peut organiser des courses de chevaux avec pari mutuel. Le pari mutuel aux termes de la Loi actuelle n'est permis que sur la piste de courses d'une association constituée en corporation avant le 19 mai 1947 qui avait été autorisée à le faire avant cette date, ou sur les terrains de courses ou les associations de courses constituées en corporation le ou après le 19 mai 1947, par une loi spéciale du Parlement du Canada ou de la législature d'une province.

Il sera donc désormais possible pour une association constituée en corporation.

...par une loi, ou en conformité d'une loi du Parlement du Canada ou de la législature d'une province et dont le but ou l'un des buts est la tenue de courses de chevaux.»

d'organiser, en somme, des courses de chevaux avec pari mutuel à condition que toutes les dispositions relatives du Code en ce qui concerne la surveillance et le contrôle soient respectées.

Il faut donc lire à 9(1) le nombre de courses par année; et le nombre de courses par jour est indiqué au paragraphe 1 de la Loi actuelle. Le paragraphe dit simplement que les dispositions du nouvel article 178 et les règlements doivent être respectés par l'association. Le nombre de courses par réunion est fixé aux termes d'un autre paragraphe.

Ces choses sont administrées par le ministère de l'Agriculture et en avançant dans l'examen de l'article, je pourrai m'en remettre à MM. Phillips et Pratt du ministère de l'Agriculture.

Le président: M. Valade?

M. Valade: Quels sont les changements essentiels par rapport à la législation antérieure?

Le président: Il serait peut-être utile si nous passions en revue tous les paragraphes successivement, et les fonctionnaires pourraient nous dire quelles sont les différences?

[Texte]

Mr. Turner (Ottawa-Carleton): I just tried to give them, Mr. Valade. Perhaps Mr. Phillips would like to enlarge on what I said.

Mr. Phillips (Director General of Production and Marketing, Department of Agriculture): Mr. Chairman, as Mr. Turner has explained, one significant change is the change with respect to charters. Formerly under the Code one association could only race 14 days and it is proposed under this legislation that without any charter they can race up to the number of days authorized by provinces under their commissions, where there are commissions, and up to the number of days that we are able to supervise racing in terms of the staff that we have in the Department of Agriculture and the R.C.M.P.

Another significant change is bringing in tighter control over medication on and around racetracks. Another significant change has to do with the number of races per day, particularly with thoroughbred racing, and the third has to do with the portion of the take which may be retained by the tracks for operational purposes and for prize money.

The Chairman: Mr. Hogarth?

Mr. Hogarth: Mr. Chairman, we have just received two substantial briefs, one from the National Association of Race Tracks Inc., and the other from The Committee of Ontario Thoroughbred and Standardbred Horse Industries. We have not had an opportunity to consider these representations. Might I suggest that if we do carry these clauses we do it on the condition that we can come back if there is something in these briefs that warrants our attention and should be dealt with.

The Chairman: This makes it very difficult for the Committee, because this could happen on different occasions and I think, frankly, that we will have to proceed. As I said, this could happen to almost any section and if we do this we are never going to get through this Bill.

Mr. Hogarth: That is fine.

Mr. MacGuigan: Mr. Chairman, is anyone here familiar with the contents of these briefs? Is any member prepared to speak to this?

Mr. Hogarth: In any event, Mr. Chairman, the right is reserved to bring in an amendment when it goes back to the House from the Committee.

Mr. Valade: Mr. Chairman, may I ask a question? Has the Committee received any

[Interprétation]

M. Turner (Ottawa-Carleton): J'ai essayé de les indiquer, mais il serait peut-être bon pour M. Phillips de nous en expliquer les dispositions.

M. Phillips (Directeur général de la production et des marchés, ministère de l'Agriculture): Comme M. Turner l'a indiqué, il y a un changement essentiel en ce qui concerne les chartes. Autrefois, une association ne pouvait tenir des courses pendant plus de 14 jours. On propose ici d'étendre la longueur de la réunion au nombre de jours autorisés par les provinces, autorisés par les commissions provinciales là où il y a une commission. Et, selon aussi l'importance de notre personnel ou le personnel de la Gendarmerie royale que nous pouvons charger de ce contrôle.

Un autre changement ici, c'est que nous exerçons désormais un contrôle plus sévère sur l'administration de drogues aux chevaux, par exemple. Un autre changement a trait au nombre de courses par jour, surtout en ce qui concerne les courses de pur sang. Ensuite, un autre changement a trait à la proportion des recettes qui peuvent être conservées par le terrain pour les bourses, les prix et les frais d'exploitation.

Le président: M. Hogarth?

M. Hogarth: Nous venons de recevoir deux mémoires, l'un de l'Association nationale des terrains de course, l'autre de l'Association des éleveurs de chevaux pur sang de l'Ontario. Nous n'avons pas eu l'occasion d'examiner ces questions. Si nous adoptons ces articles, nous pourrions peut-être le faire à condition que l'on puisse revenir sur ces questions si les mémoires contiennent des renseignements intéressants.

Le président: Cela complique vraiment la tâche du Comité, car cela pourrait arriver à plusieurs reprises. Il va falloir procéder. Cela pourrait arriver à peu près pour tous les articles. Si nous faisons cela, nous ne finirons jamais l'étude de ce projet de loi.

M. Hogarth: Très bien.

M. MacGuigan: Est-ce qu'il y a des députés qui sont disposés à parler de cette question?

M. Hogarth: De toute manière, nous nous réservons le droit de proposer d'autres amendements à la Chambre.

M. Valade: Puis-je poser une question? Le Comité a-t-il reçu des représentations quel-

[Text]

representations? I am not talking about the briefs. Did any association communicate with the Committee with a view to presenting views or specific points?

The Chairman: I believe various members of the Committee have received representations.

Mr. Valade: I am talking about the Committee. I am interested in whether you as Chairman of this Committee have received specific recommendations regarding this article since this Committee has been studying the clauses.

The Chairman: No, I have not personally, Mr. Valade. It was brought to my attention that submissions would be made to the Committee members. I informed the people involved that we were not hearing witnesses and indicated to them that they could submit briefs to the members of the Committee and this is what they have done.

Mr. Woolliams: Mr. Chairman, perhaps I can help the situation. I would presume, having had something to do with this field, that the officials of the Department of Agriculture are pretty well abreast of what the horse racing association and other organizations have in mind. Perhaps you could clarify it.

Has there been any real objection to what is drafted here that you know of? Have they raised any serious problem that you are aware of?

• 1620

Mr. Phillips: Mr. Chairman, I might answer in this way: When changes were contemplated in this Bill, going back two years ago, the Minister of Agriculture determined that it was important to have meetings with those in the provinces involved in this legislation and also with the racing interests and at that time Mr. Greene had a meeting with the provincial officials and later with all of these people, the race track associations, the trotting associations and the other horsemen. Since that time there have been several meetings between the Minister and departmental officials and the racing associations. Also they have met, I understand, with Mr. Turner about this matter and we have taken into account the representations that were made, and decisions were made on the basis of such recommendations.

The Chairman: Mr. Hogarth.

Mr. Hogarth: I just wanted to ask the Minister if any consideration has been given with respect to the situation which arose in Regina vs Gruhl and Brennan, where the Supreme Court of Canada ruled it lawful for

[Interpretation]

conques? Je ne parle pas des mémoires mais, est-ce que d'autres associations ont communiqué avec le Comité pour présenter quelques points précis?

Le président: Je crois que plusieurs membres du Comité ont reçu en effet des observations.

M. Valade: Mais en votre qualité de président du Comité, j'aimerais que vous nous disiez si vous avez reçu des propositions particulières en ce qui concerne cet article du projet de loi?

Le président: Non, je n'en ai pas reçu personnellement. Il m'a été signalé que l'on soumettrait de ces questions auprès des membres de ce Comité. Il avait été décidé que l'on n'entendrait pas de témoins, mais on a quand même distribué ce mémoire.

M. Woolliams: Monsieur le président, peut-être puis-je éclaircir la situation. Les officiers du ministère de l'Agriculture savent probablement à quoi songent ces gens qui dirigent les associations d'éleveurs ou de terrains de courses?

Est-ce que quelqu'un—autant que vous le sachiez messieurs—s'est opposé à la nouvelle rédaction que nous proposons?

M. Phillips: Voici à peu près la situation lorsqu'on a envisagé des changements à ce projet de loi, il y a deux ans, le ministère de l'Agriculture a jugé qu'il était important de s'entretenir avec les autorités provinciales compétentes ainsi qu'avec ceux qui s'intéressent à l'élevage et aux courses de chevaux. M. Greene, le Ministre de l'époque, a réuni les diverses personnes intéressées: associations de courses de chevaux, associations de courses attelées, etc... Depuis cette époque, il y a eu plusieurs réunions entre le Ministre et les fonctionnaires et les représentants des associations de courses. Elles ont également rencontré M. Turner. Nous avons tenu compte des recommandations qu'elles avaient faites et nos décisions sont fondées sur ces recommandations.

Le président: Monsieur Hogarth.

M. Hogarth: Je voudrais simplement demander au ministre s'il sait ce que l'on va faire à propos de la situation qui s'est fait jour lors du procès de la Reine contre Gruhl et Brennan, où la Cour Suprême du Canada a

[Texte]

persons to send others to the track with money to bet.

Mr. Turner (Ottawa-Carleton): The situation there was that the Court of Appeal of Ontario held that a messenger service from the premises of an establishment off the track to the track for a bet to be delivered to the pari mutuel window, if it was a messenger service for which a messenger fee was charged and if the fee did not vary whether the bet was won or lost, was not within the contemplation of the Criminal Code. The Attorney General of Ontario appealed that decision, the Supreme Court of Canada refused petition for leave to appeal and thus the Court of Appeal of Ontario decision stands.

Prior to the Supreme Court having dismissed the petition for leave to appeal, I met with the Attorney General of Ontario, Mr. Wishart, the Attorney General of Saskatchewan, Mr. Heald and the Deputy Attorney General of British Columbia, Dr. Gilford Kennedy. They expressed some concern about the difficulty of law enforcement. They were particularly concerned that evidence would be difficult to obtain against a booking establishment because in the event of a raid, the bookie might say, "We were just going to take it down to the track and our messengers are just coming for the money." I said to Mr. Wishart, Mr. Heald and Dr. Kennedy at the time, "Let us see what happens before the Supreme Court of Canada. I do not think we should deal with it until the Court has dealt with it."

After the Court dismissed the petition for leave to appeal, I wrote all ten provincial attorneys general saying, "This appears now to be the law. Could I have your comments?" There are two views. One is that we should eventually seek an amendment to the Criminal Code to make off-track betting illegal.

The other is that we ought to leave to the licensing provisions of the provincial attorneys general as to how to regulate it. I have not received letters back from all the attorneys general yet. When I do I will have to decide whether it is urgent enough to seek special legislation or whether it can await the next revision of the Criminal Code.

Mr. Hogarth: My only concern is, Mr. Chairman, that if we await the next revision of the Criminal Code we might wait for some time and that the businesses, if they are lawful, will be well established. If they then

[Interprétation]

estimé qu'il était légal que des personnes envoient d'autres personnes jouer leur argent sur le champ.

M. Turner (Ottawa-Carleton): La Cour d'appel de l'Ontario a jugé dans ce cas, qu'un service de messagers d'un établissement situé en dehors du champ de course jusqu'au champ de course pour parier au guichet du pari mutuel si c'était un service de messagers et s'il y avait des honoraires de messagers qui ne variaient pas avec le résultat du pari, ne relevait pas du Code criminel. Le procureur général de l'Ontario a fait appel de cette décision, la Cour suprême du Canada a refusé le droit d'appel et la décision de la Cour d'appel de l'Ontario reste en vigueur.

Avant que la Cour suprême ne refuse le droit d'appel j'avais rencontré le procureur général de l'Ontario M. Wishart, le procureur général de la Saskatchewan, M. Heald et le procureur général adjoint de la Colombie-Britannique, le docteur Gilford Kennedy. Ils se sont dits assez peu optimistes sur la possibilité d'appliquer la Loi en pareil cas. Selon eux, il serait assez difficile de réunir des preuves pour faire condamner le preneur de paris car dans le cas d'une perquisition, il pourrait dire qu'il était sur le point d'envoyer ses messagers au terrain de course et qu'il les attendait avec son argent. J'ai dit à MM. Wishart, Heald et Kennedy à ce moment là: «Attendons de voir ce qui se passera devant la Cour suprême du Canada. Je ne pense pas que nous devions prendre position avant elle.

Après que la Cour suprême ait refusé le droit d'appel, j'ai écrit aux dix procureurs-généraux des provinces en disant: «Telle semble maintenant être la Loi. Est-ce que vous pourriez me dire ce que vous en pensez?» Il y a deux points de vue: le premier est que nous devrions chercher à modifier le Code criminel de façon à interdire les paris, en dehors du champ.

Le deuxième est que nous devrions donner les moyens aux procureurs généraux provinciaux de réglementer les paris. Je n'ai pas encore reçu de réponse de tout le monde. Lorsque j'aurai reçu toutes les réponses, je devrais décider si le problème est assez urgent pour que je demande une loi spéciale ou si on peut attendre la prochaine révision du Code Criminel.

M. Hogarth: Tout ce qui m'inquiète ici, monsieur le président, c'est que si nous attendons la prochaine révision du Code Criminel, nous risquons d'attendre bien longtemps. Si ces affaires sont légitimes et licites, elles ris-

[Text]

become unlawful, it will be very difficult to deal with them, from the political point of view.

Mr. Turner (Ottawa-Carleton): Yes, but I think that the people involved are under public notice. I have written the attorneys general for their views and anybody in this type of business proceeds at his own risk until we decide what the law is going to be.

Mr. Hogarth: Did you send copies to them?

Mr. Turner (Ottawa-Carleton): I am reminded by Mr. Christie that Arthur Wishart made an announcement in the legislature of Ontario that he had asked me to seek remedial legislation and that he considered this to be public notice to those enterprising people in Ontario that they proceeded with this kind of operation at their own risk. I want to get all the facts from all the provinces before I act.

• 1625

The difficulty of incorporating an immediate amendment to this bill is that there may be some argument that the amendment is beyond the scope of the bill and that it does not relate to any of the sections that we are dealing with. We have taken the position in terms of parliamentary order and procedure that we should only entertain amendments that are within the scope of the bill at the moment. I have to get replies from all the attorneys general; have not received them yet.

The Chairman: Mr. MacGuigan.

Mr. MacGuigan: Mr. Chairman, my point relates to both subsections (a) and (c) and I would like to ask the opinion of the witnesses on the reason why we are not legitimizing dog racing in Canada.

Mr. Turner (Ottawa-Carleton): I think I ought to tell you that he comes from Windsor.

Mr. MacGuigan: Dog racing is a sport which is enjoyed in many parts of the world. It is a valid sport and if it is made legitimate by law, I understand that it serves to improve the breed of dogs and especially in parts of the country like mine, Windsor, which are on the border, it would serve to bring in a great deal of good American cash. And I see no reason why subsections (a) and (c) need not be amended so as to validate dog racing.

The Chairman: Do you care to comment, Mr. Phillips?

[Interpretation]

quent de se multiplier. Si après cela on les interdit, nous aurons de sérieux problèmes politiques.

M. Turner (Ottawa-Carleton): Oui, mais je pense que tous les intéressés sont prévenus. J'ai écrit aux procureurs généraux pour leur demander leur point de vue. Tous ceux qui s'occupent de choses comme ça, le font à leurs risques et périls.

M. Hogarth: Leur avez-vous envoyé des copies?

M. Turner (Ottawa-Carleton): M. Christie me rappelle que M. Arthur Wishart a fait une déclaration à l'Assemblée législative de l'Ontario, disant qu'il m'avait demandé de faire adopter une loi corrective de façon à faire savoir aux gens qui faisaient cela en Ontario, qu'ils le faisaient à leurs risques et périls. Mais, je ne voudrais pas agir avant d'avoir reçu des rapports de toutes les provinces.

La difficulté d'amender d'ores et déjà le projet de loi, c'est qu'on pourra prétendre que l'amendement dépasse les cadres du bill et qu'il n'a rien à voir avec les articles que nous discutons. Du point de vue parlementaire, je pense qu'il me faudrait recevoir pour l'instant, que les amendements qui appartiennent bien au contenu du bill. Je n'ai pas encore reçu de réponses de tous les procureurs généraux.

Le président: M. MacGuigan.

M. MacGuigan: J'ai une question à poser en ce qui concerne les paragraphes a) et c). Je voudrais demander aux témoins pourquoi on ne légalise pas les courses de chiens au Canada.

M. Turner (Ottawa-Carleton): On voit bien que la question vient de Windsor.

M. MacGuigan: Mais, les courses de chiens sont très populaires dans bien des parties du monde. C'est un sport en bonne et due forme et s'il est légalisé, il pourra servir à l'amélioration de la race canine et dans bien des endroits, notamment dans des villes comme la mienne, Windsor, qui sont à la frontière, cela permettrait un notable apport de devises américaines. Je ne vois vraiment pas pourquoi les articles a) et c) ne pourraient pas être modifiés de façon à permettre désormais les courses de chiens.

Le président: Est-ce que M. Phillips aurait quelque chose à dire?

[Texte]

Mr. Phillips: I think I could only comment, in an administrative way because this is really a policy decision, that we are certainly not equipped at the moment to provide supervision for this type. We are having difficulty enough as it is to have sufficient staff to meet the demands of the horse racing industry and the interests of the betting public in that area.

Mr. MacGuigan: I assume there would have to be licensing procedures set up by the provinces in any event so that merely moving these from the realm of criminality would not mean that they would start the next day. I assume that you would have time to prepare for the onslaught if it were to occur.

Mr. Turner (Ottawa-Carleton): I am going to rescue Mr. Phillips from matters of policy and say that it is the policy of the government at the moment that we do not want to broaden the provisions to include dog racing.

Mr. MacGuigan: Would you care to say why, Mr. Minister?

Mr. Turner (Ottawa-Carleton): There is no enthusiasm for it among members of the government at the present time.

Mr. MacGuigan: Thank you, Mr. Minister.

The Chairman: Getting back to proposed section 178 (1) (a).

Clause 11, proposed section 178, subsection (1) paragraphs (a) to (c) inclusive carried.

On Clause 11, proposed section 178, subsection (2): *Limitation on daily number of races.*

Mr. McQuaid: Is there any particular magic in the word "eight" in line 20 of subsection (2) (b)? I am thinking of cases in my own province such as what we call old home week. They have two cards of racing, one in the afternoon and one in the evening. Night races are particularly popular. Is there any particular reason why they could not have four races in the afternoon, perhaps, and six races at night? They cannot do it, I understand, under this section.

In other words, you cannot run more than 10 unless you get the permission of the Minister of Agriculture, and the Minister of Agriculture has no discretion to give you that permission unless either one of the qualifications in subsection (2) (a) and (b) are met. I was wondering if there is any particular reason why you require a minimum of eight in one card.

[Interprétation]

M. Phillips: Je ne peux faire qu'une remarque administrative, car ceci est une question de politique, c'est que nous ne sommes pas prêts pour l'instant à nous occuper de cela. Nous avons déjà suffisamment de difficultés de personnel avec les courses de chevaux pour veiller à ce qu'elles se passent dans l'intérêt des parieurs.

M. MacGuigan: Je pense que de toutes façons, il y aurait la délivrance d'un permis par les provinces, de sorte que les sortir de la criminalité ne voudrait pas dire qu'elles commenceraient le lendemain. J'imagine que vous auriez le temps de vous préparer à leur arrivée.

M. Turner (Ottawa-Carleton): Je vais venir en aide à M. Phillips en ce qui concerne le point de vue politique et dire que la politique du gouvernement pour l'instant est que nous ne voulons pas libéraliser les structures pour inclure les courses de chiens.

M. MacGuigan: Pourriez-vous nous expliquer pourquoi, monsieur le Ministre?

M. Turner (Ottawa-Carleton): Il n'y a pas d'enthousiasme pour les courses de chiens parmi les membres du gouvernement à l'heure actuelle.

M. MacGuigan: Merci, monsieur le Ministre.

Le président: Revenons à l'article 178(1)(a). Article 11 du Bill relatif aux alinéas a) à c) inclus du paragraphe (1) de l'article 178 du code, adopté

Article 11 du Bill relatif au paragraphe (2) de l'article 178 du code: *Limitation du nombre quotidien de courses.*

M. McQuaid: Qu'est-ce qu'il faut entendre par «huit», à la 24ième ligne de b)? Je songe au cas où dans ma propre province par exemple, nous avons des courses, en certaines circonstances, l'après-midi et le soir. Les courses en nocturnes sont très populaires. Pourquoi est-ce qu'il ne pourrait pas y avoir 4 courses dans l'après-midi et 6 courses le soir, par exemple? Je pense que selon cet article sur les courses ce ne serait pas possible.

En d'autres termes nous ne pouvons pas avoir plus de 10 courses à moins d'avoir la permission du ministre de l'Agriculture et le ministre ne peut pas donner cette autorisation si on ne se conforme pas aux conditions des alinéas a) et b) du paragraphe 2. Pourquoi faudrait-il un minimum de 8? Pourriez-vous nous le dire?

[Text]

Mr. Phillips: Well, Mr. Chairman, I will answer in this way. The problem was in determining the extension of the number of races per card, if you will. There might be a device for extending this, let us say to 12, 13 or 14 races. And there was a desire in certain areas, as you mentioned, for two cards of racing. So it was felt that in this situation there could be provision for two cards as spelled out here, providing they were two legitimate cards.

Mr. McQuaid: Yes, but you would not allow four cards in the afternoon and seven in the evening for example.

Mr. Phillips: No.

Mr. McQuaid: Why is that? Why is the number limited to eight?

Mr. Phillips: I will ask Mr. Pratt to reply.

Mr. S. B. Pratt (Chief, Race Track Betting Supervision, Dept. of Agriculture): Mr. Chairman, the simple reason was that they would defeat the 10-race card limitation because they would simply hold a half hour later and run two more races and you would be faced with two racing cards. Actually there would be 12 straight races right through and in this way, by giving a break, you have two distinct racing cards in the day.

Mr. McQuaid: Yes, I find no fault with the break. You require a break of at least two hours.

• 1630

Mr. Pratt: That is right.

Mr. McQuaid: But is there any particular reason why we could not run five races in the afternoon, have a break of two hours, and run let us say, six races in the evening?

Mr. Pratt: If we did not put a minimum on it, it could get down to where we could conceivably race four cards in the afternoon and four cards at night and the cost would become exorbitant because your fees would be paid on a daily basis, not on races. Our supervision clause should become aborted.

Mr. MacGuigan: Well, is there any evidence that this would seriously restrict the racing practice now in effect in Canada?

Mr. Pratt: My apologies, sir, I missed the question.

Mr. MacGuigan: Is there any evidence that this would affect the operation of race courses in Canada?

Mr. Pratt: As it is now written, sir?

[Interpretation]

M. Phillips: Pour une journée de courses, le problème était de déterminer le nombre de courses, on pourrait peut-être augmenter le chiffre jusqu'à 12, 13 ou 14 courses. Dans certaines régions, comme vous l'avez dit, on pourrait parler d'autoriser 2 réunions dans la même journée. On pensait donc que nous devrions prévoir le cas où il y aurait deux réunions distinctes dans une journée, que ces courses soient vraiment distinctes.

M. McQuaid: Vous ne permettriez pas 4 courses dans l'après-midi et 7 le soir?

M. Phillips: Non.

M. McQuaid: Pourquoi avez-vous limité à huit?

M. Phillips: Je vais demander à M. Pratt de répondre.

M. Pratt (Chef, Surveillance des paris sur le champ, ministère de l'Agriculture): Monsieur le président, la raison est très simple c'est qu'on pourrait tourner la limite de 10 courses. On attendrait une demi-heure et avoir deux courses de plus ensuite. En somme, on aurait 12 courses d'affilée. De cette façon, en prévoyant une interruption, vous avez deux réunions complètes pendant la journée.

M. McQuaid: Oui, mais votre interruption doit durer au moins 2 heures?

M. Pratt: C'est exact.

M. McQuaid: Mais pourquoi ne pas avoir 5 courses dans l'après-midi, avant une interruption de deux heures, et 6 courses le soir?

M. Pratt: C'est que si nous n'imposons pas un minimum, nous pourrions avoir 4 courses dans l'après-midi et 4 courses le soir, et nos frais deviendraient exorbitants. Vous seriez payé sur une base journalière et non sur le nombre de courses.

M. MacGuigan: Est-ce qu'il y a quelque chose qui prouve que cela puisse sérieusement affecter le fonctionnement du champ de courses au Canada?

M. Pratt: Je regrette, monsieur, j'ai raté la question.

M. MacGuigan: Y a-t-il une preuve que cela pourrait affecter sérieusement le fonctionnement des champs de course au Canada?

M. Pratt: Comme il est stipulé présentement?

[Texte]

Mr. MacGuigan: No, the operation as it now is. Would this be changed by the new law? I understand the old law has—

Mr. Pratt: No.

Mr. MacGuigan: —no minimum requirement and the new law does.

Mr. Pratt: No, this would not affect it as it now operates. I might say that the tracks are in agreement with it.

Mr. McQuaid: All the tracks are in agreement?

Mr. Pratt: That is correct.

Clause 11, proposed Sections 178(2) and 178(3) agreed to.

On Clause 11, proposed Section 178(4)—Percentage that may be deducted and retained.

The Chairman: Mr. Murphy.

Mr. Murphy: Mr. Chairman, I have an amendment. I move that Bill C-150 be amended.

(a) by striking out line 11 on page 29 and substituting the following:

'pool of each race or each individual feature pool from the total amount'; and

(b) by striking out lines 35 to 39 on page 30 and substituting the following:

The Chairman: Perhaps we could restrict the amendment to proposed Section 178(4) and then deal with the one on page 30 when we come to proposed Section 178(5)

Mr. Cantin donne lecture de l'amendement en français.

Mr. Cantin: Mr. Chairman, in (b) we are going to page 30.

The Chairman: Yes, I think, we should stop at subsection (4).

Mr. Phillips: Mr. Chairman, this modification was indeed brought about through some representations made by the racing people to clarify and make certain that this related to all the pools. There was a question about feature pools where it involved more than one race to judge a winner while the betting was only on the one race, and this suggested amendment was made to make it perfectly clear that it covered feature pools as well as the individual pools.

Amendment agreed to.

Mr. Valade: In respect of sub-section (4) it seems that the purpose of the brief just submitted by the National Association of Canadi-

[Interprétation]

M. MacGuigan: Non, non, les opérations prévues par cette loi-ci seront-elles différentes des opérations actuelles? Si je comprends bien l'ancienne loi a...

M. Pratt: Non.

M. MacGuigan: Pas de besoin minimum et la nouvelle loi l'est.

M. Pratt: Tel que les courses opèrent présentement, non. Je dois dire que les terrains de courses approuvent nos initiatives.

M. McQuaid: Tous les terrains de courses sont d'accord?

M. Pratt: Oui.

L'article 11 du bill relatif aux nouveaux articles 178 (2) et 178 (3) est adopté.

L'article 11 du bill relatif au nouvel article 178 (4)—Pourcentage qui peut être déduit et retenu.

Le président: M. Murphy?

M. Murphy: Monsieur le président, j'ai un amendement. Je propose que le bill C-150 soit modifié

(a) par l'insertion, après la ligne 12, à la page 29, des mots suivants: «*ou pour chaque cagnotte spéciale distincte,*» et

(b) par le retranchement des lignes 38 à 44, à la page 30, et leur remplacement par ce qui suit:

Le président: Nous pourrions peut-être restreindre l'amendement au nouvel article 178 (4) et nous occuper ensuite de celui qui est à la page 30 lorsque nous en serons au nouvel article 178 (5).

Mr. Cantin reads the amendment in French.

M. Cantin: Dans B, nous passerons à la page 30.

Le président: Nous pourrions peut-être nous en tenir au paragraphe 4.

M. Phillips: Cette modification fait suite à certaines des observations qui nous ont été faites par les gens qui s'intéressent aux courses de chevaux. On a voulu s'assurer par là que cela visait toutes les cagnottes. On parlait des cagnottes spéciales où il y avait plus d'une course pour juger le gagnant tout en gardant les paris à une seule course, et l'amendement proposé a été fait pour préciser que cela visait les cagnottes spéciales aussi bien que les cagnottes particulières.

L'amendement est approuvé.

M. Valade: En ce qui concerne le paragraphe 4, le mémoire qui nous a été soumis par la *National Association of Canadian Race*

[Text]

an Race Tracks Inc. is to deal with this part of the section. On page 2 of their submission they stated that they expected to be able to represent their views in the Committee. I do not know if it is fair for this Committee to just look into their submission and then itself decide what to do with it.

The Chairman: Mr. Valade, I know the Committee wants to be fair. This summation just arrived today. There has been ample time for submissions. Perhaps it might help the Committee if the submission was made available to the Minister and his assistants.

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Mr. Woolliams: Read the proposal on page 5. That is all that is required.

Mr. Turner (Ottawa-Carleton): Perhaps we will have Mr. Phillips read the proposal on page 5 and then make comments on it. How is that?

Mr. Phillips: Mr. Chairman, this is the proposal:

PROPOSAL

Subsection (4) of section 178 provides for a sliding scale commencing at 9.5% rising to 12% and based on the average amount wagered per race at a race course during the immediately preceding calendar year.

Obviously, circumstances vary throughout the different areas of Canada, and within our own membership there were differing views as to the appropriate percentage which the racing associations should be permitted to deduct and retain from the wagering. However, after approximately two years of discussion between ourselves, a totally unanimous position was arrived at. The position of the Association is that the percentages which appear in subsection (4) should commence at 11% and rise to 13%.

I might comment, Mr. Chairman, that there certainly has been representation about the amounts to be paid that should be taken out of the pool. We have had many meetings discussing it. We have had our accountants examining, with the co-operation of the tracks, the take in the various areas and the various sized tracks and it was the judgment of the government that this would cover the situation adequately. Of the tracks that operate now, 80 per cent will be getting 33½ per cent increase in revenue, 13 per cent will be getting an increase ranging from 11 to 26 per cent, and five or six tracks will be getting an increase of around one-half of one per cent. I

[Interpretation]

Tracks Inc. semble viser cette partie de l'article. A la page 2 du mémoire qu'ils ont soumis ils ont déclaré qu'ils s'attendaient pouvoir présenter leurs points de vue au Comité. Je ne sais pas si c'est juste de la part du Comité de prendre connaissance du mémoire puis de décider ce qu'il doit en faire.

Le président: Monsieur Valade, je sais que le Comité veut être juste. Nous venons de recevoir cette sommation. Il serait peut-être utile au Comité si le mémoire était communiqué au ministre et à ses adjoints.

M. Woolliams: Lire les propositions en page 5. C'est tout ce qu'il faut faire

M. Turner (Ottawa-Carleton): Monsieur Phillips devrait peut-être prendre connaissance de la proposition à la page 5 et nous dire ce qu'il en pense. Qu'en dites-vous?

M. Phillips: Monsieur le président, voici la soumission:

SOUSSION

Le sous-paragraphe (4) de l'article 178 prévoit une échelle variable commençant à 9.5 p. 100, s'élevant jusqu'à 12 p. 100 et basée sur la moyenne des montants pariés par course à une piste de courses au cours de l'année précédente.

Il est évident que les conditions varient dans les différentes parties du pays, et chez nos propres membres l'on trouve des opinions divergentes quant à la proportion adéquate que les Associations de courses devraient avoir le droit de déduire et de retenir à même les argents pariés. Toutefois, après deux ans de discussion, nous en sommes arrivés à l'unanimité. La prétention de notre Association est que le pourcentage mentionné au sous-paragraphe (4) devrait commencer à 11 p. 100 et s'élever jusqu'à 13 p. 100.

Je pourrais peut-être dire monsieur le président que nous avons certainement reçu des observations en ce qui concerne le montant que l'on devait retirer de la cagnotte. Nous avons discuté de la chose longuement. Nos comptables avec la collaboration des terrains de courses ont comparé les recettes dans les diverses régions selon l'importance des divers champs de courses et le gouvernement a jugé que cela viserait les besoins des terrains. Dans environ 80 p. 100 des pistes de courses, les recettes accuseront une augmentation de 33½ p. 100, 13 p. 100 verront leurs recettes augmenter dans la proportion de 11 à 26 p. 100 et cinq ou six pistes auront une augmen-

[Texte]

just forget what the percentage of that is. It is the larger tracks of course that are getting the smaller percentage. The increased revenue to all tracks based on 1967 wagering will be \$3.8 million on the basis of this.

Mr. Valade: Of course I did not have time to look into the details of this, but is it not also true that 40 to 45 per cent of the money received by the track goes to the horse owners and to the trainers and that there is actually a demand for an increase in this percentage by the horsemen. I think that might be one of the reasons that this submission has been forwarded to this Committee.

Mr. Phillips: Mr. Chairman, if you want me to comment on that, it certainly was taken into account in the representations and in the decisions that approximately half of the take by the tracks went to the horsemen. I had indicated earlier that the purpose of it was for operating expenses, for prize money to horsemen and profit, if any.

Mr. Valade: I am not a specialist in horse racing but I do believe that the costs of keeping and caring for these horses has greatly increased. I am not here to take a position especially for track owners or anyone else, but if the Committee accepted this submission I certainly think it would be a good thing because it might help horse owners to improve the quality of their horses and to expend more on their conditioning.

Clause 11, proposed Section 178(4) as amended agreed to.

Mr. Valade: What is the amendment?

The Chairman: The amendment was read by Mr. Murphy.

Mr. Valade: Would the Committee not also like to take a decision on the submission? Should we not consider this point?

The Chairman: I am open to suggestions. There is no amendment before the Committee and I have posed the question whether the section as amended should carry, and it has carried.

Mr. Valade: Well then, Mr. Chairman, may we come back to this submission?

• 1640

The Chairman: No, we cannot, Mr. Valade.

[Interprétation]

tation d'environ $\frac{1}{2}$ p. 100. Je ne peux dire quel pourcentage. Évidemment, ce sont les plus petits pourcentages qui iront aux plus grands terrains. L'augmentation des recettes sera de 3.8 millions de dollars si on se fonde sur les chiffres joués en 1967.

M. Valade: Je n'ai pas eu le temps de prendre connaissance de tous ces détails, mais n'est-il pas exact que 40 à 45 p. 100 de l'argent reçu par la piste va au propriétaire et à l'entraîneur et que ces derniers demandent une augmentation de ce pourcentage? C'est, à mon avis, une des raisons pour lesquelles on a soumis ce mémoire au Comité.

M. Phillips: Si vous me permettez, monsieur le président, on a certainement tenu compte dans les recommandations et les décisions qu'environ la moitié des recettes du terrain allaient au propriétaire et aux entraîneurs. Je l'avais dit plus tôt que c'était censé couvrir les frais d'exploitation, les prix en argent versés aux jockeys et les bénéfices, s'il y a lieu.

M. Valade: En somme, je ne suis pas spécialiste dans les courses de chevaux, mais je crois fermement que les frais d'entretien de ces chevaux ont considérablement augmenté. Je ne veux pas ici défendre particulièrement les intérêts des propriétaires de terrains de courses ou de quelqu'un d'autre mais si le Comité acceptait cette proposition, ce serait certainement une bonne chose, car cela pourrait aider les propriétaires à améliorer la qualité des chevaux et à faire courir des chevaux en meilleure condition.

Le président: L'article 11 du bill relatif au nouvel article 178(4) tel que modifié est approuvé.

M. Valade: Quel est donc l'amendement?

Le président: C'est l'amendement qui a été lu par M. Murphy.

M. Valade: Ne devrions-nous pas aussi décider de cette proposition? Ne nous faut-il pas étudier cette question?

Le président: J'invite vos propositions. Il n'y a pas d'amendement devant le comité. J'ai pourtant mis l'article aux voix et il a été adopté.

M. Valade: Alors monsieur le président, pouvons-nous reprendre l'étude de ce mémoire?

Le président: Nous ne pourrions pas revenir là-dessus.

[Text]

Mr. Valade: Well perhaps the Committee should consider this proposition and make an amendment. It seems to be a fair demand by people who know their needs and requirements.

I personally know some reasons but I believe that the submission is a professional one, it is being submitted to us by people who are in the trade, so to speak, and it seems to me a very reasonable demand. I think the Committee should consider this as an amendment to sub-section (4).

Mr. Hogarth: On a point of order, Mr. Chairman, I suggested a few moments ago that this stand. You ruled against me, and as much as I support Mr. Valade's suggestion and he obviously now supports mine, I think you have ruled on that, and we should go on. And I think that with respect to Mr. Valade, Mr. Chairman, when the bill goes back to the House if any member wants to amend it further by including these things, he is free to present that amendment, although that would be a difficult amendment to project in the House of Commons. Nonetheless, the right to do so is there.

The Chairman: Yes, I think this is a fair comment, Mr. Valade. It does not close the door. An amendment can be brought up.

Mr. Turner (Ottawa-Carleton): Mr. Chairman, I want to make a comment or two here. The Department of Agriculture has looked at this carefully. It is an increase of about 11 per cent across the board in revenue at the tracks. As a result of representations, the maximum was raised from nine to 12. That is to say, from nine to 12 over C-195 as it is now found in C-150. The Minister of Agriculture has taken this into full consideration and feels that the racetracks and the owners are being given a fair shake under this legislation. Is that right, Mr. Phillips?

Mr. Phillips: Yes, that is right, sir.

Mr. Turner (Ottawa-Carleton): Do you want to say anything more?

Mr. Phillips: No, I cannot add much. I would just repeat myself. We, indeed, went in with the co-operation of the tracks and examined tracks and their revenue, and the various areas in which they could get the revenue. And I think they are very fair in their brief in saying they had mixed feelings

[Interpretation]

M. Valade: Le Comité devrait peut-être étudier la question et proposer un amendement. C'est une demande qui me semble assez juste, les gens qui connaissent leurs propres besoins savent ce qu'il leur faut.

Je connais personnellement quelque-unes des raisons, mais j'ai l'impression que le mémoire nous a été soumis par des spécialistes de la question; il nous a été soumis par des gens du métier et à mon avis leurs demandes me semblent raisonnables. Il serait peut-être bon que le Comité songe à modifier le paragraphe (4).

M. Hogarth: C'est ce que j'ai proposé il y a quelques instants.

J'avais proposé de réserver l'article, mais vous n'avez pas voulu m'entendre et comme je partage l'avis de M. Valade et qu'il partage maintenant le mien, je crois que puisque vous avez déjà exprimé votre décision à ce sujet, nous devrions continuer. En toute déférence envers M. Valade, qu'il me soit permis de lui rappeler que, lorsque le projet de loi sera de nouveau présenté en Chambre, si on veut le modifier de nouveau en introduisant ces aspects, on pourra le faire. Ce sera peut-être un amendement difficile à présenter à la Chambre, mais on a toujours le droit de le présenter.

Le président: Oui. Je crois que votre commentaire est valable. Cette porte demeure ouverte. On peut certainement proposer un amendement plus tard.

M. Turner (Ottawa-Carleton): Le ministère de l'Agriculture a étudié cette question d'assez près. C'est une augmentation moyenne de 11 p. 100 des revenus aux courses. Par suite des observations qui ont été faites, le maximum a été porté de 12 p. 100 au bill C-150 par rapport au bill C-195. Le Ministère de l'Agriculture a étudié cette question sérieusement et il estime que les champs de courses et leurs propriétaires sont bien traités aux termes de la Loi.

Est-ce exact, monsieur Phillips?

M. Phillips: C'est exact.

M. Turner (Ottawa-Carleton): Est-ce que vous désirez ajouter autre chose?

M. Phillips: Je n'ai pas grand'chose à ajouter. Je ne ferais que me répéter. En collaboration avec les gens des champs de courses nous sommes allés sur les lieux pour étudier de très près les terrains, les recettes et les diverses façons dont ils tirent des recettes. Ces gens sont très francs dans leur mémoire et ils

[Texte]

about what it should be and that they are unanimous. But this has been recommended by the Minister and approved by Cabinet, and I have indicated the increased revenue to them which will allow them to make additional prize money available to horsemen.

The Chairman: Clause 5. On the amendment to Clause 5. Mr. Murphy.

Mr. Murphy: I believe it is in paragraph (7), Mr. Chairman.

The Chairman: Well, I will call paragraph 5, at the top of page 30.

Clause 11, proposed Sections 178(5) and 178(6) agreed to.

Clause 11, proposed Section 178(7)—Regulations.

Mr. Murphy: An amendment, Mr. Chairman.

The Chairman: Mr. Murphy.

Mr. Murphy: That Bill C-150 be amended by striking out lines 35 to 39 on page 30 and substituting the following:

(d) the prohibition, restriction or regulation of

(i) the possession of drugs or medications or of equipment used in the administering of drugs or medicaments at or near race courses, or

(ii) the administering of drugs or medicaments to horses participating in races run at a race meeting during which a pari-mutuel system of betting is used; and

The Chairman: Mr. Cantin.

M. Cantin donne lecture de l'amendement en français.

The Chairman: Mr Deakon.

Mr. Deakon: When we are translating these
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amendments, are we taking into account the lines? For example, the French translation.

Mr. Cantin: No, it has been changed.

Mr. Deakon: There are different numbers, different lines.

Mr. Cantin: It changed from 35 to 38 and 40 to 44.

The Chairman: All in favour of the amendment?

[Interprétation]

avouent qu'ils n'étaient pas tout d'abord unanimes mais qu'ils le sont maintenant. Mais cette recommandation a été faite par le ministre et approuvée par le Cabinet, et je leur ai signalé les recettes accrues qui leur permettront d'offrir des bourses plus fortes aux gagnants.

Le président: Article 5. Il y a un amendement à l'article 5. Monsieur Murphy?

M. Murphy: Je crois que l'amendement est à l'alinéa (7), monsieur le président.

Le président: Je vais donc mettre l'alinéa (5) aux voix.

L'article 11 du bill relatif au nouvel article 178, paragraphes 5 et 6 du Code est adopté.

L'article 11 du bill relatif au nouvel article 178 paragraphe 7 du Code—Règlements.

M. Murphy: Je désire présenter une modification, monsieur le président.

Le président: Monsieur Murphy.

M. Murphy: Que le bill C-150 soit modifié par le retranchement des lignes 38 à 44, à la page 30, et leur remplacement par ce qui suit:

«d) l'interdiction, la restriction ou la réglementation

(i) de la possession de drogues ou de médicaments ou de matériel utilisé pour administrer des drogues ou des médicaments sur des pistes de course ou près des pistes de course, ou

(ii) de l'administration de drogues ou de médicaments à des chevaux qui participent à des courses lors d'une réunion de courses au cours de laquelle est utilisé un système de pari mutuel; et»

Le président: Monsieur Cantin.

Mr. Cantin reads the amendment in French.

Le président: Monsieur Deakon?

M. Deakon: Lorsqu'on traduit ces amende-

ments, est-ce qu'on tient compte du nombre de lignes? La traduction française, par exemple.

M. Cantin: Non, le nombre de lignes est différent.

M. Deakon: Car les lignes ne correspondent pas.

M. Cantin: Elles ont été échangées de 35 à 38 et de 40 à 44.

Le président: Ceux qui sont en faveur de l'amendement?

[Text]

Mr. Phillips: Mr. Chairman, the reason for this amendment is through representations made by the racetrack association. They drew to our attention the need for tightening up in the area of the administration of drugs. This just related the way it is worded now to the possession, and it is our belief that this is a stronger section now with the amendment to provide for control.

The Chairman: Mr. Valade.

Mr. Valade: Mr. Chairman, on that point, I do not want to delay too much on these things, but there is a phrase which has caused some concern with people to whom I have talked. I will take the English text. Subparagraph (d) contains the phrase "near race courses". This is a very loose phrase because there is no definition of it. For example, a horse being shipped to Montreal may end up at Dorval, and we know that the airport at Dorval is close to Blue Bonnets racetrack. Could this be interpreted as being near the racetrack? In that case a horse that could be waiting to go to Blue Bonnets—

Mr. Turner (Ottawa-Carleton): How far do you live from the course?

Mr. Valade: No. I live at the other end. This is not my personal point of view. I represent the people there, not myself. Because of the over-usage of racetracks or space, horse barns have to be built outside the racetracks sometimes, not too far off but far from the racetrack. How is this term "near" interpreted with regard to medications?

As an example, if a horse received drugs before it left Toronto and landed in Dorval, there could be a complaint under that section that the horse is under medication. A complaint could be made in this regard under that section because the word "near" is not defined. It could be interpreted any way.

Mr. Pratt: Mr. Chairman, it is the intent to define this in regulations, and the purpose for the words "at or near". Many racetracks operate an area immediately adjacent to the racetrack itself where they store the trailers for grooms and trainers, and this area would be defined as being under their control.

Mr. Valade: That could be done by regulation?

Mr. Pratt: That is the intent, sir.

The Chairman: Shall the amendment as moved by Mr. Murphy carry?

Clause 11, amendment to proposed Section 178(7), agreed to.

[Interpretation]

M. Phillips: La raison de cet amendement, c'est de répondre aux observations de l'association des champs de course. Ils ont signalé le besoin de contrôler plus efficacement et plus sévèrement l'administration des drogues on s'en prend à l'expression actuelle relative à la possession. Nous croyons en effet que cet article est amélioré grâce à l'amendement qui prévoit un contrôle plus sévère.

Le président: Monsieur Valade.

M. Valade: Monsieur le président, je ne voudrais pas trop retarder les débats, mais il y a une phrase ici qui suscite beaucoup d'inquiétude. Je vais prendre le texte anglais. À l'alinéa (d) on dit: "...près des pistes de courses." C'est une phrase très vague, car il n'y a pas de définition. Par exemple, si un cheval est transporté à Montréal, il peut aboutir à Dorval; nous savons que l'aéroport de Dorval n'est pas très loin du terrain de course Blue Bonnets—est-ce que l'on peut interpréter cela comme voulant dire que c'est près d'un champ de courses. Un cheval qui attend d'aller à Blue Bonnets...

M. Turner (Ottawa-Carleton): A quelle distance du champ de courses vivez-vous?

M. Valade: Non. Je vie à l'autre bout de Montréal. Ce n'est pas mon point de vue personnel. Je représente le peuple. À cause de l'utilisation excessive de l'espace dans les terrains de course, il arrive assez souvent que les écuries soient construites pas trop loin, mais quand même relativement loin des terrains de course. Comme doit-on interpréter le mot «près»? Par exemple, si un cheval a été drogué avant de quitter Toronto, qu'il arrive à Dorval et qu'il y avait une plainte portée aux termes de cet article à l'effet que le cheval est drogué, on pourrait avoir une telle plainte car le mot «près» n'est pas défini. On pourrait l'interpréter de diverses façons.

M. Pratt: On a l'intention de le définir dans les règlements. Un grand nombre de champs de course ont des terrains adjacents où sont remisés les roulottes pour les jockeys et les entraîneurs, c'est cette zone qui tomberait sous le coup de la Loi.

M. Valade: On pourra le définir dans le règlement?

M. Pratt: Oui, c'est notre intention.

Le président: Est-ce que la modification proposée par M. Murphy est adoptée?

L'article 11, l'amendement proposé au nouvel article 178 (7) du Code est adopté.

[Texte]

Clause 11, proposed Sections 178(7), 178(8), and 178(9) agreed to.

The Chairman: If it is the Committee's wish we can proceed to the question of the breathalyzer test.

We have stood Clause 7 pertaining to homosexuality and the abortion matter, pending evidence to come on Tuesday.

Mr. Hogarth: Is the evidence that we are going to hear Tuesday concerned with Section 149?

The Chairman: I understand it does not concern the breathalyzer.

Mr. Hogarth: I do not know what is going on in Alberta, Mr. Chairman, but the four cases of gross indecency reported in Tremeeear's annotated criminal code are all from Alberta.

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Mr. Valade: Could we know, Mr. Chairman, who is going to be the witness next Tuesday morning?

The Chairman: I thought it was the doctor that you had suggested.

Mr. Valade: Well, I was not told about it.

The Chairman: Will you be able to have the doctor Tuesday morning?

Mr. Valade: Has he been advised by the Committee that he would be here?

The Chairman: We are at the point again where it is difficult to transcribe, so will you please direct your questions to the Chair. Has the question of the witness now been dealt with?

Mr. Valade: Yes, if the Committee has agreed to have this witness next Tuesday morning.

On Clause 16—*Driving while ability to drive is impaired.*

Mr. Turner (Ottawa-Carleton): Would the Committee allow me a few words to introduce the drinking and driving sections?

Clause 16, Mr. Chairman, and related Clause 17 deal with drinking and driving.

Section 224 creates a new offence whereby a person will be prohibited from driving or having the care or control of a motor vehicle while the proportion of alcohol in his blood exceeds .08 per cent. This new offence will carry the same penalties as the offence of

[Interprétation]

L'article 11, le nouvel article 178 du Code paragraphes 7, 8 et 9 est adopté.

Le président: Si le Comité le désire, nous pouvons maintenant passer à la question de l'ivressomètre.

Nous avons réservé l'article 7 relatif à l'homosexualité et l'avortement, en attendant les témoignages qui seront présentés mardi.

M. Hogarth: Est-ce que les témoignages que nous allons entendre mardi touchent l'article 149?

Le président: Ils ne touchent pas, si j'ai bien compris, l'ivressomètre.

M. Hogarth: Je ne sais pas ce qui se passe en Alberta, mais tous les cas d'indécence grossière relevés dans le code criminel annoté de Tremeeear se passaient dans cette province.

M. Valade: Pourriez-vous nous dire qui sera le témoin mardi prochain?

Le président: Je croyais que ce serait le médecin dont vous aviez parlé.

M. Valade: On ne m'en a pas parlé.

Le président: Le médecin pourra-t-il être ici mardi matin?

M. Valade: Le Comité l'a-t-il prévenu qu'il devra être là?

Le président: Nous en sommes de nouveau au point où il sera difficile de transcrire nos propos. Est-ce que vous pourriez adresser vos questions au président? Est-ce qu'on a fini de parler de cette question de témoins?

M. Valade: Oui, si le Comité est prêt à entendre ce témoin, mardi matin.

Article 16, *conduite pendant que la capacité de conduire est affaiblie.*

M. Turner (Ottawa-Carleton): Est-ce que je pourrais dire quelques mots en guise de préface aux articles relatifs à la conduite en état d'ivresse?

Les articles 16 et 17 ont trait à la conduite des automobiles en état d'ivresse. L'article 224 crée un nouveau délit. Il serait interdit de conduire une voiture, ou d'en avoir la garde ou le contrôle, lorsque la teneur en alcool dans le sang dépasse .08 p. 100. La sanction sera la même que pour le délit de conduite alors que les facultés sont affaiblies par l'al-

[Text]

driving or having care or control of a motor vehicle while impaired.

Section 223 makes it compulsory for the driver to take a breath test when required to do so by a peace officer who has reasonable and probable grounds to believe that the person's ability to drive is impaired. In order to ensure fair, uniform and effective enforcement of the law it will be an offence for a driver to refuse without reasonable excuse to take the test in these circumstances.

Therefore, the peace officer has to have reasonable and probable cause for believing that the person's ability to drive is impaired; and second, the driver must refuse to take the test without reasonable excuse.

Also, in order to prevent a person from benefiting by his refusal to take a breath test when he is bound by the new provisions to do so, the same penalty is provided for failure, or refusal without reasonable excuse, to take the test as is provided for the impaired driver or for the person who drives while the alcohol in his blood exceeds the prescribed limit.

In other words to make it incumbent upon the person to take a test the same penalty is meted out for refusal to take the test as if, having taken the test, he was found to have a blood count of over .08 per cent, or was found to have been impaired while driving.

By section 224A, where such breath test is taken within two hours and the various conditions set out in the legislation relating to the taking of the test are complied with, the result of the test is *prima facie* evidence of the alcohol in the blood of the driver at the time of the alleged offence.

I think we should point out, Mr. Chairman, that the driver is not compelled by the Criminal Code, or under this Bill, to take any test other than a breath test. There is no requirement that the driver should submit to a blood test or a urine test. The offence of driving while intoxicated, which is found in present Section 222 of the Code, will no longer appear in the Criminal Code, but the offence of impaired driving under section 223, which is found under present section 223 of the Criminal Code, and which by its terms is adequate to cover all degrees of impairment arising from liquor or drugs, remains unaffected by the change in the law.

In other words, the offence of impaired driving, whether caused by alcohol or drugs, remains unchanged. Therefore, whether the proportion of alcohol in the blood of the driver does, or does not, exceed .08 per cent may

[Interpretation]

cool. L'article 223 fait qu'il est obligatoire pour le chauffeur de se soumettre à un test d'éthylomètre lorsqu'il en est prié par un agent de police qui a de bonnes raisons de croire que ses facultés sont affaiblies par l'alcool. De façon que la Loi soit désormais appliquée d'une façon juste, équitable et uniforme, ce sera un délit pour le chauffeur de refuser de s'y soumettre, sans bonnes raisons.

D'abord, il faut que l'agent de police ait de bonnes raisons de croire que la capacité de conduire du chauffeur est affaiblie, et deuxièmement, le chauffeur doit refuser de se plier à l'épreuve sans excuse raisonnable.

Pour empêcher qu'une personne ne puisse tirer avantage de son refus, lorsqu'il est obligé de le faire, en vertu de ces nouvelles dispositions, la même sanction est prévue pour le refus de se plier à l'épreuve, que dans le cas de la personne dont les facultés sont amoindries par l'alcool, ou pour la personne dont le sang a une teneur en alcool supérieure à .08 p. 100.

Bref, la personne qui refuse de se plier à l'épreuve est jugée avoir une teneur en alcool supérieure à 0.8 p. 100 ou avoir conduit en état d'ivresse.

Quant à l'article 224A, où on faisait le test dans les deux heures et où les diverses conditions précisées dans la mesure législative en ce qui concerne l'administration de l'épreuve sont respectées, le résultat de l'épreuve peut être invoqué comme preuve *prima facie* lorsqu'il s'agit d'établir la teneur de l'alcool dans le sang.

Je veux signaler ici, monsieur le président, que la seule épreuve dont il est question ici, c'est l'éthylomètre. Il n'est pas question d'analyse de l'urine, ni d'analyse du sang. Le délit de conduite en état d'ivresse qu'on trouve à l'article 222 du Code criminel ne figurera plus au Code criminel, mais le délit de conduite alors que les facultés sont affaiblies par l'alcool, que l'on trouve actuellement à l'article 223, vise tous les cas de conduite de ce genre, qui subsistent.

Autrement dit, le délit n'est pas changé, qu'il s'agisse d'ivresse causée par des stupéfiants ou de l'alcool. En somme, si la teneur en alcool du sang ne dépasse pas .08 p. 100, le chauffeur peut toujours être coupable s'il per-

[Texte]

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still be guilty of an offence if he drives while his ability to drive is impaired by alcohol or a drug.

In other words, the new statutory limit in no way affects the old, continued offence of driving while impaired by alcohol or a drug.

Because of the importance of these sections I would like to say a few words about our view of the need for the legislation. I have not made a practice of introducing sections with any long speech, but I think I ought to try to set what I believe to be the right climate for considering these sections.

The figures from the Dominion Bureau of Statistics show that in the ten years from 1958 to 1967 the number of persons killed on the highway rose by over 66 per cent and the number of persons injured in the same period in highway accidents rose by more than 100 per cent. During the first six months of 1968, increases were registered in all categories of motor vehicle accidents. Traffic injuries were up 8.4 per cent over the same period in 1967, and traffic deaths were up 4.1 per cent over that same period in 1967.

In the five-year period from 1962 to 1966, inclusive, summary convictions for driving while impaired have risen from less than 25,000 to nearly 30,000, an increase of 20 per cent.

We do not pretend that the amendments we are proposing for the consideration of Parliament and of this Committee are going to cure all the ills that befall drivers, passengers and pedestrians on the highway. They are put forward as an essential effort to eliminate at least one significant cause of accidents, namely, consumption of alcohol.

I think I ought to recall to members of the Committee that there have been recommendations supporting the principle of these proposals from many sources, including the following:

An earlier Standing Committee on Justice and Legal Affairs, which supported the percentage of .08 per cent for a compulsory breathalyzer test; The Canadian Bar Association, which supported the compulsory breathalyzer test; at a rate of .08 per cent;

The British Medical Association, which supported the .08 per cent;

The Greater Winnipeg Highway Safety Council;

The Canadian Medical Association, which wanted a compulsory breathalyzer test, but at an even stiffer rate of .05 per cent;

[Interprétation]

siste à conduire alors que ses facultés restent affaiblies.

En somme, ces nouvelles dispositions ne touchent en rien au délit d'une conduite de voiture alors que les facultés sont affaiblies par l'alcool ou un stupéfiant.

Parlons maintenant, à cause de l'importance de ces articles, de la nécessité de cette loi. Normalement, je ne fais pas de longs discours en présentant ces articles. Toutefois, il serait bon que je donne ici une explication un peu détaillée. Les chiffres du Bureau fédéral de la statistique montrent que, dans les dix ans, de 1958 à 1967, le nombre de personnes tuées sur les routes a augmenté de 66 p. 100. Le nombre de personnes blessées au cours de la même période a augmenté de plus de 100 p. 100. Pendant les six premiers mois de 1968, comparativement à la même période de 1967, des augmentations ont été enregistrées pour toutes les catégories d'accidents d'automobiles. Les blessures ont connu une augmentation de 8.4 p. 100 et les morts sur la route ont augmenté de 4.1 p. 100.

En cinq ans, de 1962 à 1966 inclusivement, les condamnations sommaires de culpabilité sont passées de 25,000 à près de 30,000, soit une augmentation de 20 p. 100.

Nous ne prétendons pas que les amendements que nous entendons soumettre au Parlement vont faire disparaître tous les accidents de la route, vont protéger les automobilistes et les piétons contre tous les dangers. Toutefois, nous voulons au moins éliminer une cause importante d'accidents, c'est-à-dire la consommation d'alcool.

Il faut rappeler aux membres du Comité que le principe de nos propositions a été appuyé par un grand nombre de personnes, notamment un ancien comité de la Chambre sur les affaires juridiques a notamment voulu appuyer le chiffre de .08 p. 100.

L'Association canadienne du barreau a appuyé également l'application obligatoire du test d'éthylomètre à .08 p. 100. La *British Medical Association* a appuyé le chiffre de .08 p. 100. Le Conseil de la sécurité routière de Winnipeg et l'Association médicale du Canada étaient favorables au test obligatoire, mais ils parlaient d'une teneur de .05 p. 100. Une résolution de l'Assemblée législative du Manitoba, du 2 mai 1968, demandait que l'on fixe cette teneur en alcool à .08 p. 100. Une Loi britannique sur la sécurité routière prescrit également le chiffre de .08 p. 100, le ministre des

[Text]

A resolution of the Legislature of the Province of Manitoba, adopted on May 22, 1968, calling for a compulsory breathalyzer test in the Criminal Code at .08 per cent; and

The United Kingdom Road Safety Act, 1967, which has also prescribed the figure of .08 per cent, with power in the Minister of Transport to vary the figure by Order-in-Council.

I want to say that the most thorough field survey demonstrating the effects of drinking on driving was that carried out in Grand Rapids, Michigan, through the year from July 1, 1962 to June 30, 1963. The most important conclusions of this most extensive survey were as follows: (a) Blood alcohol levels over .04 per cent are definitely associated with an increased accident involvement. The probability of accident involvement increases rapidly at alcohol levels over 0.08 per cent, and becomes extremely high at levels above 0.15 per cent. When drivers with blood alcohol levels over 0.08 per cent have accidents, they are more severe (in terms of injury and damage) accidents, and more expensive accidents than similar sober drivers.

(b) Relative Probability of Causing an Accident: At the .06 per cent level the probability is 100 per cent greater than at the 0.00 per cent level; at the .08 per cent level the probability is 65 per cent greater than at the .06 per cent level; at the .10 per cent level the probability is 100 per cent greater than at the .08 per cent level. (c) Drivers in the higher alcohol level classes tend to become involved more frequently in the more severe accidents. Thus an accident-involved driver in the 0.08 per cent and higher alcohol level class is almost twice as frequently involved in a fatal or serious accident as the driver in the 0.00 per cent alcohol level class.

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I now want to point out the British experience since 1967, when the Road Safety Act was enacted in the United Kingdom.

The Act came into force early in October of that year (1967). The statistics for the first twelve months after the introduction of the legislation show a remarkable decline in traffic deaths and injuries. There was an overall reduction of 40,459 road casualties—roughly a ten per cent reduction from the previous year. This was made up of 1,152 fewer people killed, 11,177 fewer people seriously injured and 28,130 fewer people slightly injured.

An important point is that the reduction in casualties was most marked during the hours from ten at night until four in the morning,

[Interpretation]

Transports étant d'ailleurs habilité à varier le chiffre au terme d'un décret du Conseil.

Je voudrais dire que les études les plus sérieuses sur l'effet de l'alcool sur la conduite automobile ont été faites à Grand Rapids au Michigan, du 1^{er} juillet 1962 au 30 juin 1963. Cette étude très poussée a abouti aux conclusions suivantes: (a) les teneurs en alcool supérieures à .04 p. 100 ont un rapport étroit avec la participation à l'accident. La possibilité de participation à l'accident augmente rapidement lorsque le niveau dépasse .08 p. 100 et devient extrêmement élevés à des niveaux supérieurs à .15 p. 100. Les chauffeurs dont la teneur en alcool du sang dépasse .08 p. 100 ont des accidents plus graves, plus nombreux, et, en conséquence, plus sérieux que si la teneur en alcool est inférieure.

(b) A .06 p. 100, la probabilité est de 100 p. 100 plus haute qu'à .00 p. 100. A .08 p. 100 la probabilité est de 65 p. 100 plus haute qu'à .06 p. 100. A .10 p. 100 la possibilité est de 100 p. 100 plus considérable qu'à .08 p. 100. (c) Les chauffeurs qui boivent plus ont des accidents plus nombreux et plus graves. Un chauffeur qui a un accident et dont la teneur en alcool du sang est de .08 p. 100 a deux fois plus d'accidents graves que le chauffeur dont la teneur est de 0.00. Il y a aussi l'expérience britannique. Depuis l'adoption de la *Loi sur la sécurité routière*, en 1967, voici ce qui s'est passé.

La Loi est entrée en vigueur au début d'octobre 1967. Les statistiques pour les douze premiers mois après l'introduction de la mesure législative montrent une diminution très nette du nombre de morts et de blessés dans les accidents de la route. Il y a eu une diminution de 40,459 accidents de la route, soit environ 10 p. 100 par rapport à l'année antérieure: 1,152 morts de moins, 11,177 blessés et 28,130 personnes blessées légèrement.

L'important à noter ici, c'est que cette diminution du nombre des accidents était surtout remarquée entre 10 heures du soir et 4

[Texte]

which is the worst period for accidents associated with drinking. The reduction in the casualty rate in these evening hours, or early morning hours, was a startling 33 per cent. And for Saturday night and Sunday morning the reduction in casualties was approximately 40 per cent.

It cannot be denied that there are other factors that must be taken into account in assessing these figures. There have been general improvements recently in the United Kingdom in traffic controls; there have been improvements in the laws regulating tires; there have been improvements in traffic law enforcement procedures; there have been extensive traffic safety publicity programs; and special "no claim" discounts have been offered by motor vehicle insurers. When all of this is admitted however, I think it can still be said that the legislation in the United Kingdom has had an appreciable effect.

Mr. Woolliams: You think it is a deterrent, then?

Mr. Turner (Ottawa-Carleton): I think it is a deterrent and as I said on Second Reading in the House of Commons, Mr. Chairman, I do not think any of us look at this legislation as puritans in any way. We have all been in the situation where we have said: "There but for the grace of God..." But at any rate it is quite simple: If you drink do not drive and if you drive do not drink. That being so, these provisions of the law will not be applicable. Thank you, Mr. Chairman.

Mr. Chappell: Mr. Chairman, may I ask the Minister whether he can tell us the cost of these breathalizers? I am concerned that if the cost is not too high they could be readily available to people who may wish to make themselves available as experts on behalf of accused. Second might he consider in each case as in England whether the accused person should be offered a urine test if he wishes. That certainly would be inexpensive, but it is something that could be saved and when he gets out on bail he could run his own test later.

Mr. Turner (Ottawa-Carleton): We have not designated any particular machine yet, Mr. Chappell, but the one we are considering costs approximately \$800.

Mr. Woolliams: Who has the concession?

Mr. Chappell: I was reading that some of the public houses in England have these

[Interprétation]

heures du matin. C'est la pire période pour les accidents attribuables à l'utilisation de l'alcool. La réduction du nombre des accidents pendant ces heures de la nuit a été de 33 p. 100, chiffre étonnant. Pour samedi soir et dimanche matin la diminution du nombre des victimes a été de 40 p. 100 environ.

On ne saurait nier donc qu'il y a eu récemment une amélioration générale dans le contrôle de la circulation au Royaume-Uni, il y a eu amélioration des lois régissant les pneus; il y a eu amélioration des lois dans les méthodes dont l'objet est de faire respecter la loi; il y a eu des campagnes de publicité très poussées sur la sécurité routière. L'assurance automobile a offert des escomptes spéciaux aux conducteurs exempts d'accidents. Après avoir admis tout cela, cependant, on ne saurait nier que la législation britannique a eu des effets bénéfiques.

M. Woolliams: Vous croyez donc que c'est une mesure préventive?

M. Turner (Ottawa-Carleton): Je crois que c'est une mesure préventive et, comme je le disais à la Chambre des communes, monsieur le président, à l'étape de la deuxième lecture, je suis d'avis que personne d'entre nous ne croit que cette loi est puritaine en quelque façon. Chacun de nous avons connu des situations où nous avons dit: «Par la grâce de Dieu...» Mais de toute manière, c'est très simple: si vous buvez, ne pas conduire, si vous conduisez, ne pas boire. Si vous vous en tenez à ça, les dispositions de la loi ne s'appliqueront pas. Merci, M. le président.

M. Chappell: Est-ce que le ministre pourrait nous dire combien coûtent ces ivressomètres. Je crains que s'ils ne sont pas trop coûteux, ils pourraient facilement devenir accessibles aux personnes qui voudraient se mettre à la disposition de l'accusé, à titre d'experts. Considère-t-il que dans chaque cas, comme en Angleterre, on devrait offrir à l'accusé de se prêter à une analyse d'urine s'il le désire? Sûrement, cela ne coûterait pas cher, et c'est une chose qui pourrait être conservée; après avoir été libéré pour cautionnement, l'accusé pourrait ensuite procéder à sa propre analyse.

M. Turner (Ottawa-Carleton): Nous n'avons fait le choix d'aucune machine, mais celle que nous nous proposons d'avoir coûte \$800 environ.

M. Woolliams: Qui est autorisé à les vendre?

M. Chappell: En Angleterre, ces machines existent dans certains bistros et pour cinq

[Text]

machines and for 5 shillings you can test yourself before you leave and decide whether to take a taxi or your car.

Mr. Woolliams: Now who has the concession? Apparently there is some portable machine in England that the police carry around that must be considerably less expensive than \$800.

Mr. Turner (Ottawa-Carleton): I understand from the police who are experts that they are preparing inexpensive portable machines based on the crystal principle that can give you a rough reading. I do not know whether they will be part of standard gear, but there will be portable sets, I imagine.

• 1705

Mr. Chappell: Will you also comment on my suggestion about making the urine test available to an accused so he can run his own test when he wishes to?

Mr. Turner (Ottawa-Carleton): I am just trying to think of the best way to answer your question, Mr. Chappell.

If an accused wants to get some corroborative evidence about the state of his blood, I guess he is entitled to use his own bottle and keep it for evidence.

Mr. Chappell: But Mr. Minister, I picture him in cells and he is not at liberty to walk around and find a bottle, and unless they give him a bottle he is just helpless trying to get some evidence.

An hon. Member: He has already had his bottle.

Mr. Turner (Ottawa-Carleton): We stayed away from the urine test. I am sure that the enterprising counsel here will make it part of their compulsory equipment in their little bags when they visit their clients in the cells. We stayed away from the urine test, but it is certainly available to the accused to bring forth any type of evidence he can muster.

Mr. Jerome: Mr. Chairman, having reviewed the principles and the rationale behind the new amendments and the stiffening approach to the drinking driver, I think I can speak for most members of the Committee when I say that we are all, in a representative way, equally concerned with this particular problem, so steps that are being taken in this legislation to remove the drinking driver from the highway before be

[Interpretation]

shillings, avant de quitter, on peut se soumettre soi-même à son épreuve et on peut choisir de rentrer dans sa propre voiture ou prendre un taxi.

M. Woolliams: Qui est autorisé à les vendre?

M. Chappell: Il y a des machines portatives en Angleterre que la police transporte avec elle et qui coûtent beaucoup moins que \$800.

M. Turner (Ottawa-Carleton): Les policiers et les experts sur cette question nous diront qu'on est en train de préparer des machines portatives qui utilisent des cristaux et qui donnent une espèce de lecture approximative.

Je ne sais pas si cet équipement sera absolument standard mais ces appareils portatifs existeront certainement.

M. Chappell: Que pensez-vous de l'idée de mettre à la disposition de l'accusé la possibilité de procéder à une analyse de sa propre urine s'il le désire?

M. Turner: Je cherche la meilleure façon de répondre à votre question M. Chappell. Si un prévenu veut obtenir des preuves pour corroborer sa formule sanguine, il a parfaitement le droit d'utiliser son propre échantillon en guise de preuve.

M. Chappell: Mais il est dans la cellule. Il ne peut pas se promener à la recherche d'une bouteille.

A moins qu'on lui donne une bouteille il lui est impossible d'apporter une preuve.

Une voix: Mais il a déjà eu sa bouteille!

M. Turner (Ottawa-Carleton): Nous n'avons pas voulu aborder l'analyse de l'urine. Je pense que les avocats entrepreneurs dans le cas présent apporteront des bouteilles dans leurs serviettes comme attirail nécessaire lorsqu'ils visiteront leurs clients dans les cellules. Nous n'avons pas abordé l'analyse d'urine, mais il est certain que l'accusé est toujours libre d'apporter la preuve de son choix.

M. Jerome: Après avoir étudié les principes et le raisonnement sur lesquels s'appuient les nouveaux amendements et l'attitude plus sévère à l'endroit du conducteur qui consomme de l'alcool, je crois que je puis parler au nom de la majorité des membres du Comité en disant que nous sommes tous, de façon représentative, préoccupés par ce problème; les mesures qui seront prises en vertu de la présente loi pour empêcher les conduc-

[Texte]

becomes dangerous are, I think, steps that will be very widely accepted.

I am concerned not about that principle, but the extension of that principle into the criminal law so that it becomes necessary, in the minds of the drafters of this legislation, for the person who falls into this unfortunate category be classified as a criminal, because not only is this being done through the vehicle of and the creation of an offence to begin with, but an indictable offence at that.

In particular I am concerned about the refusal of a person to take a test. We are proposing in this draft legislation that a person who refuses to take a test shall be convicted of an offence for his refusal to do so. The reason I asked my question on principle is because there are administrative procedures, or what I call administrative legislation at least—certainly under the provincial statutes—which accomplishes the intended purpose that I think we have in mind here; that is, the suspension of the driving privileges and the elimination from the highway of the dangerous driver, but it is done in an administrative way by virtue of the power vested in the provincial ministers of transport.

Now, there is precedent under the Criminal Code in Section 717 for a justice in cases of threats, or evidence put before him of threats, to call a person before him and conduct an inquiry, and upon finding certain facts he may suggest that the person submit to a bond which, in this case, I would suggest would be tantamount to a sacrifice of his driving privileges, failing which certain undesirable results would ensue.

Now, it seems to me that it is in line and in conformity with the principles that we have in mind in this legislation, which is to eliminate this kind of driver from the highway, but we do not go on from there to do what I submit is an emasculation of the criminal law to create not only an offence, but an indictable offence, where really we are getting into the area of saying that we are creating offences for people who fail to incriminate themselves. Now, am I wrong in principle here?

Mr. Turner (Ottawa-Carleton): I would like to argue that in principle. I would like first of all to start with the last part of your argument, Mr. Jerome.

[Interprétation]

teurs qui consomment de l'alcool de circuler sur les routes avant qu'ils ne deviennent un danger, sont, je crois, des mesures qui seront fortement appuyées.

Ce n'est pas le principe qui me préoccupe; c'est l'extension de ce principe en droit criminel. Les rédacteurs de la loi semblent avoir cru nécessaire que la personne qui se trouve dans cette situation regrettable soit désormais classée comme criminelle, parce que, en premier lieu, cela se fait non seulement par l'intermédiaire de la création d'un délit, mais d'un délit criminel à cela.

Je m'inquiète en particulier du cas où une personne refusera de se soumettre au test. Nous proposons dans ce projet de loi qu'une personne qui refuse de se soumettre à l'épreuve pourra être trouvée coupable d'une infraction pour le seul fait d'avoir refusé. La seule raison pour laquelle je pose cette question de principe c'est qu'il y a des procédures administratives, ce que j'appelle du moins une législation administrative, certainement en vertu des lois provinciales, qui satisfait au but que nous avons à l'esprit en ce moment, c'est-à-dire, la suspension du privilège de conduire et l'interdiction de la route au conducteur dangereux. Mais ceci se fait par un procédé administratif en vertu des pouvoirs qui sont dévolus aux ministres des Transports des provinces.

Maintenant, il existe un précédent en vertu de Code pénal à l'article 717, à l'égard d'un juge, dans les cas de menaces ou de preuve de menaces qui lui sont soumises, de faire comparaître une personne devant lui et de procéder à une enquête, et, à la suite de la découverte de certains faits, il peut demander qu'une personne dépose une caution qui, dans le cas présent équivaldrait au sacrifice de son privilège de conduire, à défaut de quoi des conséquences indésirables s'ensuivraient.

Il me semble que c'est conforme aux principes que nous avons à l'esprit dans cette loi, soit de retirer de la route un conducteur de ce genre, mais, à partir de là, jusqu'à faire ce qui selon moi serait une émascation de la loi pénale, non seulement un délit, un délit criminel par lequel nous nous engageons dans un domaine où nous disons que nous créons des infractions touchant les personnes qui refusent de s'incriminer elles-mêmes. A ce point de vue, est-ce que j'aurais tort en principe?

M. Turner (Ottawa-Carleton): J'aimerais répondre à votre argument de principe. D'abord, je voudrais commencer par la dernière partie de votre argumentation, M. Jerome.

[Text]

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The argument you put forward is that because a person is compelled to take a breathalyzer test he may, in effect, be compelled to give evidence against himself. In other words, he is incriminating himself, and for refusal to incriminate himself you are saying that he is subject to an indictable offence.

I want to put it to you that this is not self-incrimination at all. Under the proposed legislation a person cannot be required to take a breath test unless he is conducting himself in such a way that a peace officer has reasonable and probable grounds to believe that his ability to drive is impaired.

In this respect the legislation gives a great deal more protection to the individual than the Road Safety Act of 1967 of the United Kingdom, for instance, where the person may be compelled to take the test if the policeman has reasonable cause to suspect him of having alcohol in his blood; and also the mere occurrence of an accident in the United Kingdom is sufficient to justify a policeman requiring the driver to provide a sample of his breath—the mere occurrence of an accident.

Now I said it was not self-incrimination. The rule of law which protects an accused person against compulsory self-incrimination relates only to statements. I want to refer you to the 1955 Supreme Court of Canada decision, the Attorney General of Quebec against *Begin*, found at page 593 of the Supreme Court reports of 1955, and a later case, also in the Supreme Court of Canada, in 1958, the validity of Section 92(4) of the *Vehicles Act* 1957, found at 1958 Supreme Court Reports at 608. In dealing with the provisions of the Saskatchewan legislation relating to compulsory breathalyzer tests, Mr. Justice Fauteux said this:

As its subject matter or purpose, the confession rule does not embrace the incriminating conditions of the body, features, fingerprints, clothing or behaviour of the accused, that persons, other than himself, observe or detect and ultimately report as witnesses in judicial proceedings.

In the same case Mr. Justice Rand said this:

The . . . rule against self-incrimination is one for the protection not of the guilty, but of the innocent.

Now what we are requiring as compulsory is the state of man's blood through a breathalyzer test, just as a state of behaviour—the

[Interpretation]

Selon vous, parce qu'une personne est obligée de se soumettre à l'ivressomètre, elle pourrait, effectivement être obligée de témoigner contre elle-même. Et pour avoir refusé de s'incriminer elle-même, vous dites qu'elle s'expose à être reconnu coupable d'un délit criminel.

Je voudrais vous assurer que cette personne ne s'incrimine aucunement elle-même. En vertu de la loi proposée, on ne peut pas exiger, à moins qu'elle ne se comporte de façon telle que le représentant de la loi ait un doute, raisonnable et probable, de croire que sa faculté de conduire est affaiblie.

Bref, la loi donne beaucoup plus de protection à l'individu que la loi, par exemple, sur la circulation routière de 1967 de Grande-Bretagne, où on peut obliger une personne à subir un test lorsque l'agent de la paix a des raisons de croire qu'elle a de l'alcool dans son sang. Le seul fait qu'il y ait accident autorise les policiers anglais à analyser l'haleine du conducteur.

J'ai dit qu'il ne s'agissait pas d'auto-inculpation. La loi qui protège l'accusé contre l'auto-inculpation obligatoire n'a trait qu'aux déclarations. Je vous renvoie à la décision prise en 1955 par la Cour suprême du Canada: le procureur général du Québec, contre *M. Bégin*, à la page 593 des rapports de la Cour suprême, de 1955. Vous verrez un autre cas un peu plus loin, encore à la Cour suprême du Canada, en 1958, relativement à la validité de l'article 92 (4) de la *Loi sur les véhicules*, de 1957 à la page 608 des rapports de la Cour suprême de 1958. Il s'agit d'une mesure législative de la Saskatchewan en ce qui concerne l'éthylomètre; le juge Fauteux avait déclaré:

La loi sur l'aveu ne porte pas sur le caractère accusatoire du physique, des empreintes digitales, des vêtements ou du comportement de l'accusé, que d'autres personnes que lui pourraient observer et rapporter au tribunal.

M. Rand disait, à propos du même cas:

La règle contre l'auto-inculpation est censée protéger non pas le coupable, mais l'innocent.

Nous demandons simplement que l'examen du sang à l'aide d'un éthylomètre soit obligatoire, au même titre qu'une étude de compor-

[Texte]

ability to walk a line, his fingerprints—identification. So in terms of self-incrimination we do not believe this is incrimination.

In terms of making it an indictable offence we feel that in order to make the state of alcohol in the blood as related through the breath a meaningful test, we have to make it compulsory for a driver under certain circumstances where there is reasonable and probable cause on the part of a peace officer to suspect that he is impaired and where he refuses it without reasonable excuse. As I said, we have to make it compulsory, otherwise the test itself is meaningless. And in order to make it compulsory we went through the reasoning process that you have to have the same penalties available for refusal to take the test as if the results of the test were .08 per cent, or impaired driving, because if you made it less the person would refuse to take the test and say "I would rather refuse to take the test than get nailed for an impaired driving charge or get nailed for a .08 per cent". Now unless the penalties are equal the accused is going to take the option.

That is the reason, Mr. Jerome, that we keep the offences of equal magnitude. You would not suggest, for instance, that in impaired driving we have a suspension of a licence?

Mr. Jerome: No, I am not suggesting any lightening of the effect upon the driver; I want that clearly understood. I do not wish to suggest that I run counter to the principle of this intended legislation because, as say, like most of the public and most of the people concerned with this, I am very much in favour of stiffening our approach to the drinking driver. What I maintain is that in conformity with the principle that the Minister has set out, I believe that we can at the same time maintain or keep ourselves free of any implication of an annihilation of certain basic principles of the criminal law by achieving precisely the desired result without adding, simply the imposition of an offence, particularly an indictable offence, against the person involved. So that if we were to provide that

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upon failure to take the test, which is compulsory, a person is called before a justice and that justice finds in fact that the person did refuse to take the test without reasonable excuse, his licence is thereby suspended.

Mr. Turner (Ottawa-Carleton): But I would venture to say that if you or I were caught in a spot like that we would refuse to take the

[Interprétation]

tement: capacité de marcher en droite ligne, empreintes digitales, identification. Bref, nous ne pensons pas qu'il s'agisse là d'auto-inculpation.

Quant à en faire un délit criminel, disons ceci: Pour que la teneur du sang en alcool soit mesurable d'après l'haleine, il faut absolument que le conducteur, dans certaines circonstances où l'on a de bonnes raisons de croire qu'il n'est pas en pleine possession de ses facultés et lorsque l'accusé refuse de se plier à l'épreuve sans raison valable, que le test soit obligatoire, sinon, il n'a pas sa raison d'être. Pour que le test soit obligatoire, nous avons dit qu'il fallait que la sanction soit la même, si l'on refuse de s'y plier, que si la teneur en alcool était de .08 p. 100 ou la conduite répréhensible. Autrement on pourrait facilement refuser de se plier en disant: «Je préfère refuser de me plier au test plutôt que d'avoir une contravention pour conduite répréhensible ou .08 p. 100 d'alcool.» Si les sanctions ne sont pas les mêmes, l'accusé va prendre le sort qui lui est le plus favorable.

C'est pourquoi, monsieur Jerome, nous considérons les délits aussi graves l'un que l'autre. Vous ne voudriez tout de même pas que nous nous contentions de suspendre le permis de conduire dans un cas de conduite répréhensible?

M. Jerome: Je ne dis pas que l'on devrait alléger les sanctions à l'égard du conducteur; je veux que l'on comprenne bien que je ne suis pas opposé au principe du projet de loi. Comme la plupart des gens qui s'intéressent à la question, je suis tout à fait d'avis qu'il nous faut alourdir les sanctions contre les conducteurs en état d'ivresse. Conformément au principe énoncé par le ministre, je crois que nous pouvons à la fois éviter d'outrepasser certains principes fondamentaux de droit criminel pour en arriver au résultat désiré sans créer un délit, surtout un délit criminel. Aux termes de cet article, si une personne refusait de se plier au test obligatoire elle pourrait être citée au tribunal, et si le magistrat constate qu'elle a refusé de se soumettre à l'épreuve, son permis de conduire est suspendu.

M. Turner (Ottawa-Carleton): Je dois dire que si vous ou moi étions dans un cas semblable, nous préfererions refuser de subir le test

[Text]

test and take the suspension of the licence rather than take the risk that our breathalyzer test would show an alcohol content over .08 per cent.

Mr. Jerome: That may very well be, but surely if that is the case the person who is in that position must, I would think, be subject to such evidence as would tend to convict him under our present laws or tend to result in a trial at least conducted on an impaired driving charge. The police would then have three choices. One of these choices would be to proceed with a trial on an impaired driving charge if in fact they felt they had evidence to support it without a breathalyzer test—which they are frequently compelled to do now. If they are unsure of their grounds in respect to an actual charge of impaired driving because the accused person does not demonstrate the symptoms, they could simply bring him before a justice for refusal to take the test, which would result in the same penalties. On the other hand, if he did take the test and they were in doubt, then they have the evidence given by the test.

The reason I ask the question is that I agree completely with the principles set out in the intended legislation; the only aspect of it with which I disagree and which I feel is unnecessary is the aspect of imposing an offence at all. But if an offence, then I completely disagree that the offence must be an indictable one. I say that we can accomplish what is intended by taking the driver off the road. But why make a criminal out of him? I think one of our major difficulties now is that when we come to punish these people before the courts we are treating them in the manner that we treat criminals when, in fact, we know that they are not criminal persons—they are those who have committed a driving offence. I really do believe that we should get at their driving privileges without tarnishing their personal history with a registration against them of a commitment of an indictable offence.

The Chairman: Mr. MacGuigan?

Mr. MacGuigan: Mr. Chairman, I would support the Minister's position on this and disagree with my colleague, Mr. Jerome. I think the problem is that this is a new kind of criminality which has not existed before and, unfortunately, it is one which has been tolerated very considerably in middle class mores. We who belong to this group do not like to think of ourselves or our friends who may get involved in something of this kind, as criminals. Yet the fact is that unless the law does begin to take a very, very stringent attitude toward this kind of thing we are

[Interpretation]

et courir le risque de voir suspendre notre permis plutôt que de risquer qu'on découvre dans notre sang .08 p. 100 d'alcool.

M. Jerome: Sans doute, mais si tel était le cas, la personne en cause serait accusée, aux termes de nos lois actuelles, pour conduite en état d'ivresse. La police aurait donc un triple choix à faire. Elle pourrait tenter un procès pour conduite en état d'ivresse si elle peut prouver son accusation sans avoir recours à l'éthylomètre—ce qu'ils doivent souvent faire à l'heure actuelle. S'ils ne sont pas sûrs de leurs arguments parce que l'accusé ne manifeste aucun symptôme particulier, on peut se contenter de le citer au tribunal parce qu'il a refusé de se soumettre à l'épreuve, ce qui lui vaudrait la même sanction. D'autre part, si l'on effectue le test et que des doutes subsistent, on peut toujours s'en remettre au résultat du test.

J'appuie entièrement le principe du projet de loi, mais je ne pense pas qu'il soit nécessaire d'infliger une peine; si toutefois cela était nécessaire, je m'oppose à ce que ce soit pour un délit criminel. Je pense qu'on peut arriver au résultat recherché en suspendant le permis de conduire de l'accusé, sans en faire un criminel. Je crois que l'une des principales difficultés que nous avons survient quand il s'agit d'infliger une peine à ces gens, que nous traitons à la manière des criminels; or ils ne sont pas des criminels: ils sont seulement coupables d'infraction aux règles de la circulation. Je pense que nous devrions nous en prendre à leurs privilèges de conducteurs, sans qu'il soit nécessaire de ternir leur réputation en les affligeant d'un délit criminel.

Le président: Monsieur MacGuigan?

M. MacGuigan: J'appuie le point de vue du ministre à ce sujet; je ne suis pas de l'avis de mon collègue, M. Jerome. Je pense qu'il s'agit d'un nouveau genre de délit criminel qui n'a jamais existé jusqu'ici. Malheureusement, on l'a toléré pendant trop longtemps dans la classe moyenne. Nous autres qui appartenons à cette classe n'aimons pas penser que nous pourrions être considérés comme criminels s'il nous arrivait quelque chose du genre. Le fait est que, si la loi n'est pas extrêmement sévère à cet égard, nous continuerons à avoir des hécatombes sur nos routes. La position du

[Texte]

going to have the carnage on the highways that we have seen before. Therefore, I find the Minister's position convincing and I would support it.

I do, however, have some questions in mind about the penalties from a different viewpoint. Mr. Minister, why do you still keep the option under Section 225 for the magistrate to prohibit the driving on the highway? Why should this type of penalty, which is about as close as the federal government can constitutionally come to removing a licence, be excluded from the ordinary effect of an offence? Why should a first offence, second offence or third offence—certainly under a third offence—not provide for the automatic coming into effect of a penalty such as is provided in Section 225?

Mr. Turner (Ottawa-Carleton): You have an arguable point there, Dr. MacGuigan, but we felt that it was right to leave it to the discretion of the court after weighing all the facts of the case.

Mr. MacGuigan: In ways this is a lesser penalty than imprisonment and it might go some way towards meeting the feeling that Mr. Jerome has, that the prison sentence is inappropriate—although I understand that his objection is not to the sentence as such but to the fact that it is an indictable offence.

Mr. Turner (Ottawa-Carleton): In defending this kind of charge we always used to suggest to the court, particularly in cases where the man's livelihood depended upon his being able to use the car, that the judge ought to be

• 1720

able to use the discretion. Certainly when I was reviewing the drafting with the law officers I felt that the magistrate ought to have that discretion and that counsel for the accused ought to be able to put it to the judge.

An hon. Member: That is a very important point.

The Chairman: Mr. Guay?

M. Guay (Lévis): Monsieur le ministre, j'aimerais savoir si la seule preuve que .08 p. 100 d'alcool sont présents dans le sang, suffira pour faire condamner un contrevenant ou s'il y aura d'autres preuves à fournir, comme la question de la couleur des yeux, le parler, comme on procédait auparavant.

M. Turner (Ottawa-Carleton): Il y a trois offenses. Mais pour l'offense qui consiste à avoir un pourcentage au-delà de .08 p. 100

[Interprétation]

ministre me semble donc tout à fait convaincante et je lui réserve mon appui. Mais j'envisage la question des sanctions d'un autre point de vue.

Monsieur le ministre, pourquoi le magistrat est-il encore habilité, aux termes de l'article 225, à empêcher le chauffeur de conduire? Pourquoi ce genre de sanction, qui équivaut à peu près à une suspension du permis de conduire aux termes de la constitution fédérale, dispense-t-il l'accusé des effets normaux réservés à un délit? Pourquoi un premier délit, second délit et troisième délit—troisième surtout—n'entraînent-ils pas automatiquement l'imposition d'une sanction telle que celle qui est prévue à l'article 225?

M. Turner (Ottawa-Carleton): Votre point de vue est valable, monsieur MacGuigan, mais nous avons pensé qu'il était bon de s'en remettre au pouvoir discrétionnaire du tribunal qui est en mesure d'apprécier tous les éléments de la cause.

M. MacGuigan: C'est une peine moindre que l'emprisonnement. Et cela pourrait peut-être répondre jusqu'à un certain point aux objections de M. Jerome, selon lesquelles l'emprisonnement serait inapproprié—bien qu'il ne s'oppose pas tant à la peine qu'au fait qu'il s'agisse d'un délit criminel.

M. Turner (Ottawa-Carleton): En présentant notre acte d'accusation, nous avons toujours suggéré au tribunal, notamment dans les cas où la subsistance du prévenu dépendait de l'usage de son véhicule, d'user de son

pouvoir discrétionnaire. Quand j'ai révisé le projet de loi, j'ai pensé que le juge devait avoir ce pouvoir discrétionnaire et que les avocats du prévenu devaient pouvoir le rappeler.

Une voix: C'est très important.

Le président: Monsieur Guay?

Mr. Guay (Lévis): Mr. Minister, I would like to know if the sole evidence of having .08 p. 100 alcohol in the blood will be sufficient to sentence an offender or whether further proof will be required such as the colour of the eyes, speech, as was previously the case.

Mr. Turner (Ottawa-Carleton): There are three offences. But in those offences where the percentage is over .08 per cent of alcohol

[Text]

d'alcool dans le sang, le fait même d'avoir ce pourcentage dans le sang est suffisant par lui-même pour constituer l'offense parce que la science médicale considère une personne ayant ce pourcentage d'alcool dans le sang comme étant en état d'ivresse.

M. Guay (Lévis): Il n'y a donc aucune contre-preuve à fournir?

M. Turner (Ottawa-Carleton): Pour cette offense-là, aucune contre-preuve. Mais pour l'offense d'avoir conduit un véhicule sous l'influence de l'alcool, on peut présenter une contre-preuve. Dans la troisième offense, celle d'avoir refusé de se soumettre au test de l'ivressomètre, on peut présenter une contre-preuve que le policier n'avait aucun motif raisonnable d'insister, ou que l'accusé avait une excuse justifiable pour refuser. Mais s'il se soumet à l'épreuve de l'ivressomètre et que le pourcentage n'est pas de .08 p. 100, tout est terminé.

Dans le cas contraire, il y a toujours l'option à mettre en doute la validité de l'épreuve et de la machine et de contre-interroger l'analyste qui lui a fait subir l'épreuve. Cela est évident.

M. Guay (Lévis): On ne pourra pas à ce moment-là considérer comme preuve, le fait d'amener le témoin pour dire avoir rencontré l'accusé dix minutes avant l'accident, et constaté qu'il n'avait pas les facultés affaiblies et qu'il était parfaitement lucide.

M. Turner (Ottawa-Carleton): Monsieur Guay, il est écrit à la page 38, 17^e ligne du Bill:

la preuve du résultat de l'analyse chimique ainsi faite fait preuve, en l'absence de toute preuve contraire, de la proportion d'alcool dans le sang du prévenu au moment où l'infraction est alléguée avoir été commise;

Mais la preuve contraire, peut-être que la machine a été mauvaise, etc. etc. . .

M. Guay (Lévis): Voici ce à quoi je veux en venir. Auparavant, il y avait la prise de sang, le policier avait le droit d'offrir à la personne mise en accusation la prise de sang, et l'accusé avait le droit de la refuser. Mais lorsque le prévenu demandait la prise de sang, on ne pouvait pas la lui refuser. Est-ce que ce test existe encore? Si le prévenu, même s'il a subi un test d'haleine, demande qu'on lui fasse la prise de sang, le policier aura-t-il le droit de refuser?

M. Turner (Ottawa-Carleton): La Loi n'a jamais stipulé que l'accusé avait le droit d'insister sur l'épreuve de sang.

[Interpretation]

in the blood the very fact of having that percentage in the blood will be sufficient by itself to constitute an offence because medical science considers that a person with this percentage of alcohol in the blood is really in a state of drunkenness.

Mr. Guay (Lévis): Therefore, there will be no counter-evidence to be adduced?

Mr. Turner (Ottawa-Carleton): There will be no counter-evidence for that offence. But for the offence of impaired driving due to alcohol, counter-evidence may be adduced. In the third offence that consists of having refused to submit to the breathalyzer test, counter-evidence may be presented to the effect that the policeman did not have any reasonable grounds to insist or, again, that he, the accused, had a justifiable excuse for refusing. But if he submits to the breathalyzer test and if the percentage is less than .08 per cent, the matter is dropped.

In the opposite case, he has the option to question the validity of the machine and of the test; he can cross-examine the analyst who submitted him to the test. That is obvious.

Mr. Guay (Lévis): But of course at this point, the fact of bringing in witnesses to say that 10 minutes before the accident they met the accused and noted that he was not impaired and was perfectly lucid, cannot be considered as evidence.

Mr. Turner (Ottawa-Carleton): Mr. Guay, on page 38, 15th line of the Bill, I read:

evidence of the result of the chemical analysis so made is, in the absence of any evidence to the contrary, proof of the proportion of alcohol in the blood of the accused at the time when the offence was alleged to have been committed;

But as counter-evidence, you could say that the machine was a bad one, and so on.

Mr. Guay (Lévis): This is what I mean. Formerly, we had this blood test. The policeman was entitled to offer the accused a blood test. The accused could refuse to submit to the test but when the accused asked for this blood test it could not be refused. Does this test still exist? But even after the accused has been through a breathalyzer test, and if he still persists in asking for a blood test, can the policeman refuse?

Mr. Turner (Ottawa-Carleton): It was never provided in the Law that the accused was entitled to insist on having a blood test.

[Texte]

M. Guay (Lévis): On pouvait, en tous cas s'en servir énormément devant la Cour. Je me souviens de m'en être servi pour plusieurs cas, sans que ce soit légal.

• 1725

M. Turner (Ottawa-Carleton): Si vous aussi êtes capable, comme M. Chappel, d'avoir une bouteille dans votre sac quand vous visitez votre accusé, vous aurez toujours le droit de soumettre comme contre-preuve soit de l'urine, soit du sang. Vous devriez arriver comme un médecin, avec votre petit sac, quand vous allez visiter vos accusés.

M. Guay (Lévis): Monsieur le Ministre. Ne serait-il pas bon de prévoir que le prévenu pourra utiliser en contre-preuve, soit l'analyse de l'urine, soit la prise de sang?

M. Turner (Ottawa-Carleton): Excusez-moi monsieur Guay, je n'ai...

M. Guay (Lévis): Je vais répéter le début de la question. Ne serait-il pas possible de prévoir pour le prévenu le droit de demander ou d'exiger soit une prise de sang, soit une analyse d'urine pour lui permettre de faire une contre-preuve? Actuellement, on ne lui donne aucun moyen de défense.

Mr. Hogarth: Mr. Chairman, how long do you propose to sit this evening?

The Chairman: We normally sit until 6 o'clock. I am in the hands of the Committee.

Mr. Hogarth: May I suggest, sir, that two or three matters have been raised that I would like to discuss with my colleagues, particularly Mr. Jerome and I wonder if we could adjourn early today? It was not anticipated that this would come up.

The Chairman: I am quite agreeable. We could adjourn right now. It is now 5.30.

Mr. Woolliams: Mr. Chairman, just one thought before we adjourn and while we are thinking about this. There is a private member's bill on this. A conviction may arise whether the automobile is in motion or not. I have always taken a position on this, and when a fellow says that he feels he drank too much and pulls behind a hotel and gets out of his car, what can he do? He cannot throw his keys away and if he has his keys on him the law is pretty strict that the automobile is

[Interprétation]

Mr. Guay (Lévis): But we could use this very frequently before the Court. I remember having used this in several cases, without it being legal.

Mr. Turner (Ottawa-Carleton): Well, if you can also have a bottle in your bag, like Mr. Chappell, when you visit your accused, you can always submit as counter-evidence either urine or blood. You should arrive like a doctor with his little bag when you visit the accused.

Mr. Guay (Lévis): Mr. Minister, would it not be a good thing to provide that the accused be entitled to use either a urine test or a blood test as counter-evidence?

Mr. Turner (Ottawa-Carleton): Excuse me, Mr. Guay?

Mr. Guay (Lévis): I shall repeat the beginning of the question. Would it be not possible to provide that the accused be entitled to ask or demand that either a blood test or a urine test be taken for him to be able to provide counter-evidence? At the present time, he is provided with no means of defence at all.

M. Hogarth: Jusqu'à quelle heure allons-nous siéger, monsieur le président?

Le président: Nous siégeons normalement jusqu'à six heures, mais la décision appartient au Comité.

M. Hogarth: Deux ou trois points ont été soulevés, monsieur le président, que j'aimerais discuter avec mes collègues, entre autres, monsieur Jerome. Serait-il possible d'ajourner un peu plus tôt, aujourd'hui? Nous ne nous attendions pas à ce que ces points soient soulevés.

Le président: Je n'ai aucune objection. Nous pourrions ajourner dès maintenant, il est 17 heures trente.

M. Woolliams: Un mot, s'il vous plaît, monsieur le président. Un bill privé a été présenté à ce sujet. Il peut y avoir condamnation que l'automobile ait été ou non en mouvement. Si un individu réalise qu'il a peut-être un peu trop bu, qu'il stationne son automobile derrière un hôtel et en descend, que peut-il faire de plus? Il n'est pas pour lancer ses clés au loin. Pourtant, s'il a ses clés, aux yeux de la loi, il a le contrôle de l'automobile. Avant notre prochaine séance, j'aimerais que vous

[Text]

under his control and charge. Before the next meeting I would like you to take a look at that private member's bill. Although it is being made mandatory it still shocks my sense of decency with respect to civil rights. I do not like it but I am going to support it because I think we have to look after society first.

The Chairman: Thank you very much, Mr. Woolliams. We will now adjourn until Tuesday at 9.30 a.m.

[Interpretation]

jetiez un coup d'œil sur ce bill. Bien que ceci devient obligatoire, je n'en suis pas très heureux. Je n'aime pas du tout cela, mais je l'appuierai quand même parce que je crois qu'il faut d'abord songer à l'ensemble de la société.

Le président: Merci, monsieur Woolliams. La séance est levée jusqu'à 9 heures trente, mardi matin.

OFFICIAL BILINGUAL ISSUE

FASCICULE BILINGUE OFFICIEL

HOUSE OF COMMONS

CHAMBRE DES COMMUNES

First Session

Première session de la

Twenty-eighth Parliament, 1968-69

vingt-huitième législature, 1968-1969

STANDING COMMITTEE

COMITÉ PERMANENT

ON

DE LA

JUSTICE AND LEGAL AFFAIRS

JUSTICE ET DES QUESTIONS
JURIDIQUES

Chairman

Mr. Donald R. Tolmie

Président

MINUTES OF PROCEEDINGS
AND EVIDENCE

PROCÈS-VERBAUX ET
TÉMOIGNAGES

LIBRARY

No. 11

APR 28 1969

UNIVERSITY OF TORONTO

TUESDAY, MARCH 18, 1969

LE MARDI 18 MARS 1969

Respecting

Concernant le

BILL C-150

BILL C-150

Criminal Law Amendment Act, 1968.

Loi de 1968 modifiant le droit pénal.

Appearing

A. comparu

Minister of Justice and
Attorney General of Canada.

Hon. John N. Turner

Ministre de la Justice et
Procureur général du Canada.

WITNESSES—TÉMOINS

(*See Minutes of Proceedings*)

(*Voir Procès-verbal*)

THE QUEEN'S PRINTER, OTTAWA, 1969

L'IMPRIMEUR DE LA REINE, OTTAWA, 1969

STANDING COMMITTEE ON
JUSTICE AND LEGAL
AFFAIRS

COMITÉ PERMANENT
DE LA
JUSTICE ET DES QUESTIONS
JURIDIQUES

Chairman

Mr. Donald Tolmie

Président

Vice-Chairman

M. André Ouellet

Vice-président

and Messrs.

et Messieurs

Blair,
Cantin,
Chappell,
Deakon,
Gervais,
¹ Gilbert,

Guay (Lévis),
Hogarth,
MacEwan,
MacGuigan,
McCleave,
McQuaid,

Murphy,
Peters,
Rondeau,
Schumacher,
Valade,
Woolliams—20.

(Quorum 11)

Le secrétaire du Comité

Robert V. Virr

Clerk of the Committee

¹ Replaced Mr. Burton on March 17, 1969

¹ Remplace M. Burton le 17 mars 1969

[Text]

MINUTES OF PROCEEDINGS

TUESDAY, March 18, 1969
(14)

The Standing Committee on Justice and Legal Affairs met this day at 9.43 a.m., the Chairman, Mr. Tolmie, presiding.

Members present: Messrs, Cantin, Chappell, Deakon, Gervais, Gilbert, Guay (*Lévis*), Hogarth, MacEwan, MacGuigan, McCleave, McQuaid, Murphy, Peters, Schumacher, Tolmie, Valade—(16).

Appearing: Hon. John N. Turner, Minister of Justice and Attorney General of Canada.

Witnesses: From the Department of Justice: Mr. D. H. Christie, Assistant Deputy Attorney General; Mr. J. A. Scollin, Q.C., Director, Criminal Law Section.

The Committee resumed its consideration of Bill C-150.

The Chairman called clause 16. ~

Under clause 16 section 222 of the said Act was carried subject to the right to re-open on the question of penalties.

Under clause 16 section 223(1) was carried.

Under clause 16 section 223(2) was permitted to stand.

Under clause 16 section 224 was permitted to stand.

Under clause 16 section 224A was permitted to stand.

Clause 17 was carried.

At 12.20 p.m., the Committee adjourned until 3.30 p.m. this date.

AFTERNOON SITTING
(15)

The Standing Committee on Justice and Legal Affairs met this day at 3.40 p.m., the Chairman, Mr. Tolmie, presiding.

[Traduction]

PROCÈS-VERBAUX

Le MARDI 18 mars 1969.
(14)

Le Comité permanent de la justice et des questions juridiques se réunit ce matin à 9 h. 43, sous la présidence de M. Tolmie.

Présents: MM. Cantin, Chappell, Deakon, Gervais, Gilbert, Guay (*Lévis*), Hogarth, MacEwan, MacGuigan, McCleave, McQuaid, Murphy, Peters, Schumacher, Tolmie, Valade—(16).

A comparu: L'honorable John N. Turner, ministre de la Justice et procureur général du Canada.

Témoins: Du ministère de la Justice: M. D. H. Christie, sous-procureur général adjoint; M. J. A. Scollin, c.r., directeur, Section du droit criminel.

Le Comité reprend l'examen du Bill C-150.

Le président met en délibération l'article 16 du Bill.

A l'article 16 du Bill, l'article 222 de ladite Loi est adopté, sous réserve du droit de rouvrir le débat relativement à la question des sanctions pénales.

A l'article 16 du Bill, le paragraphe (1) de l'article 223 de ladite Loi est adopté.

A l'article 16 du Bill, le paragraphe (2) de l'article 223 de ladite Loi est réservé.

A l'article 16 du Bill, l'article 224 de ladite Loi est réservé.

A l'article 16 du Bill, l'article 224A de ladite Loi est réservé.

L'article 17 du Bill est adopté.

A midi 20, le Comité lève la séance jusqu'à 3 h. 30 de l'après-midi.

SÉANCE DE L'APRÈS-MIDI
(15)

Le Comité permanent de la justice et des questions juridiques se réunit cet après-midi à 3 h. 40, sous la présidence de M. Tolmie.

Members present: Messrs. Cantin, Chappell, Deakon, Gervais, Gilbert, Guay (*Lévis*), Hogarth, MacEwan, MacGuigan, McCleave, McQuaid, Murphy, Schumacher, Tolmie—(14).

Appearing: Hon. John N. Turner, Minister of Justice and Attorney General of Canada.

Witnesses: Same as at morning sitting.

The Committee resumed its consideration of Bill C-150.

The Chairman called clause 6.

Mr. Hogarth moved,

That Bill C-150 be amended by striking out lines 18 to 25 on page 23 and substituting the following:

‘98H. (1) Where, in any proceedings under any of sections 83 to 98F, any question arises as to whether a person is or was the holder of a permit or registration certificate, the onus is on the accused to prove that that person is or was the holder of such permit or registration certificate.

(2) In any proceedings under any of sections 83 to 98F, a document purporting to be a permit or registration certificate is evidence of the statements contained therein without proof of the signature or the official character of the person appearing to have signed the same.’

Motion agreed to and section 98H of clause 6 as amended, carried.

On clause 16 in relation to section 224A of the said Act, Mr. Hogarth moved,

That Bill C-150 be amended by striking out lines 16 to 20 on page 39 and substituting the following:

‘(A) that at the time the sample was taken he offered to provide to the accused a specimen of the breath of the accused in an approved container for his own use and, at the request of the

Présents: MM. Cantin, Chappell, Deakon, Gervais, Gilbert, Guay (*Lévis*), Hogarth, MacEwan, MacGuigan, McCleave, McQuaid, Murphy, Schumacher, Tolmie—(14).

A comparu: L’honorable John N. Turner, ministre de la Justice et procureur général du Canada.

Témoins: Les mêmes qu’à la séance du matin.

Le Comité reprend l’examen du Bill C-150.

Le président met en délibération l’article 6 du Bill.

M. Hogarth propose,

Que le bill C-150 soit modifié par le retranchement des lignes 20 à 29, page 23, et leur remplacement par ce qui suit:

«98H. (1) Lorsque, dans toutes procédures en vertu de l’un des articles 83 à 98F, se pose la question de savoir si une personne est ou a été le détenteur d’un permis ou d’un certificat d’enregistrement, il incombe à l’accusé de prouver que cette personne est ou était le détenteur de ce permis ou de ce certificat d’enregistrement.

(2) Dans toutes procédures en vertu de l’un des articles 83 à 98F, un document donné comme étant un permis ou un certificat d’enregistrement fait preuve des déclarations contenues dans le document sans qu’il soit nécessaire de faire la preuve de la signature de la personne par laquelle il paraît avoir été signé ni de la qualité officielle de cette personne.»

La motion est adoptée, et l’article 98H modifié de l’article 6 du Bill est adopté.

Sur l’article 16 du Bill, et relativement à l’article 224A de ladite Loi, M. Hogarth propose,

Que le bill C-150 soit modifié par le retranchement des lignes 18 à 23, page 39, et leur remplacement par ce qui suit:

«(A) qu’au moment où l’échantillon a été prélevé, il a offert de fournir au prévenu, pour son propre usage, un spécimen de l’haleine du prévenu, dans un contenant approuvé, et que, à la requête

accused made at that time, such a specimen was thereupon provided to him,'

Motion agreed to and section 224A of the Act as amended, carried.

Clauses 19, 20, 21 were carried.

On clause 22, Mr. Murphy moved,

That Bill C-150 be amended by striking out lines 27 on page 46 and substituting the following:

'3. Everyone who, without lawful excuse and with intent to'

Motion agreed to and clause 22 as amended carried.

On clause 23, Mr. Deakon moved,

That Bill C-150 be amended by

(a) striking out line 32 on page 47 and substituting as follows:

'animal or bird during any'

(b) striking out line 35 on page 47 and substituting as follows:

'custody or control of an animal'

Motion carried and clause 23 as amended carried.

Clauses 24 to 43 were carried.

Clauses 44 and 45 were permitted to stand.

Clause 46 was carried.

Clauses 47, 48, 55, 56, 60, 63, 64, 65, relating to insanity were permitted to stand.

Clauses 49 to 54 were carried.

Clauses 57, 58, 59, 61 and 62 were carried.

Clauses 66 to 69 and 71 to 73 were carried.

Clause 70 was carried on division.

Clause 74 was permitted to stand.

du prévenu faite à ce moment-là, un tel spécimen lui a été alors fourni,»

La motion est adoptée, et l'article 224A modifié de la Loi est adopté.

Les articles 19, 20 et 21 du Bill sont adoptés.

Sur l'article 22 du Bill, M. Murphy propose,

Que le Bill C-150 soit modifié par le retranchement de la ligne 28, à la page 46, et son remplacement par ce qui suit:

«culpabilité, quiconque, sans excuse légitime et avec l'intention»

La motion est adoptée, et l'article 22 modifié du Bill est adopté.

Sur l'article 23 du Bill, M. Deakon propose,

Que le bill C-150 soit modifié par

a) le retranchement de la ligne 32, à la page 47, et son remplacement par ce qui suit:

«ou oiseau ou d'en avoir la»

b) le retranchement de la ligne 38, à la page 47, et son remplacement par ce qui suit:

«d'un animal ou oiseau ou en»

La motion est adoptée, et l'article 23 modifié du Bill est adopté.

Les articles 24 à 43 du Bill sont adoptés.

Les articles 44 et 45 du Bill sont réservés.

L'article 46 du Bill est adopté.

Les articles 47, 48, 55, 56, 60, 63, 64 et 65 du Bill relatifs à l'aliénation mentale, sont réservés.

Les articles 49 à 54 du Bill sont adoptés.

Les articles 57, 58, 59, 61 et 62 du Bill sont adoptés.

Les articles 66 à 69 et les articles 71 à 73 du Bill sont adoptés.

L'article 70 est adopté sur division.

L'article 74 du Bill est réservé.

Mr. MacGuigan moved that Mr. Ouellet be re-elected vice-chairman of this Committee. M. MacGuigan propose que M. Ouellet soit réélu vice-président du Comité.

Motion agreed to.

La motion est adoptée.

At 5.37 p.m., the Committee adjourned until March 20, 1969. A 5 h. 37 de l'après-midi, le Comité s'ajourne jusqu'au 20 mars 1969.

Le secrétaire du Comité,

R. V. Virr,

Clerk of the Committee.

[Texte]

EVIDENCE

(Recorded by Electronic Apparatus)

Tuesday, March 18, 1969

• 0944

The Chairman: Gentlemen, I see a quorum. We were supposed to have a witness today but evidently he will not be here until Thursday. So I think we should turn to the Breathalyzer sections on page 35, Clause 16, and I call Section 222—Driving while ability to drive is impaired. Perhaps I should preface my remarks by stating that there has been some opinion offered pertaining to penalties, but I think we should discuss the substance of these sections and I would call Section 222.

Mr. Hogarth: I might say, Mr. Chairman, before I commence that I am somewhat taken by surprise that we are going on to this subject today as I had hoped to finish some work that I had been doing in connection with these sections later today, and I anticipated

• 0945

that that witness would be here. So I would ask that you be lenient with respect to holding sections in abeyance that we might propose to amend as we go through these breathalyzer sections. There are not too many of them.

Mr. Minister, I read your opening remarks with respect to the carnage on the highways caused by drunken driving, and I think that we are all more or less in accord with what you had to say. But I cannot understand, if that is the case, why the maximum imprisonment for impaired driving is less than the maximum imprisonment—I am referring to the first offense—for any summary conviction offense. I am referring to the three months in Section 222 (a).

Hon. John N. Turner (Ottawa-Carleton) (Minister of Justice and Solicitor General): And that is what? Six months?

Mr. Hogarth: Yes. I do not understand why it is less. Why should it not be the same?

Mr. Turner (Ottawa-Carleton): This section, Mr. Hogarth, of course, is a restatement of

[Interprétation]

TÉMOIGNAGES

(Enregistrement électronique)

Le mardi 18 mars 1969

Le président: Messieurs, nous avons quorum. Aujourd'hui, nous étions censés avoir un témoin, mais il ne peut venir avant jeudi. Alors nous passerons à l'article 16, page 35, sur l'ivressomètre, soit l'article 222—*Conduire pendant que la capacité de conduire est affaiblie*. Peut-être devrais-je tout d'abord vous dire qu'on a offert des opinions quant aux peines, mais tout d'abord, nous devrions parler de ces articles. Donc, maintenant nous prenons l'article 222. L'article 222 est-il adopté?

M. Hogarth: Je devrais peut-être dire, monsieur le président, avant de commencer, que je suis quelque peu étonné de voir que nous prenons ce sujet aujourd'hui. J'avais espéré terminer, plus tard aujourd'hui, un travail que j'avais commencé sur ces articles et je

m'attendais à ce que le témoin soit là. Donc ne soyez pas trop sévère lorsqu'il s'agit de réserver des articles auxquels nous pourrions proposer des modifications, lorsque nous étudierons ces articles relatifs à l'ivressomètre. Il n'y en a pas beaucoup.

M. le Ministre, j'ai entendu vos observations du début relatives au carnage sur les grandes routes causé par les conducteurs en état d'ivresse, et je crois que nous sommes tous plus ou moins d'accord avec ce que vous aviez à dire. Mais, s'il en est ainsi, je ne comprends pas pourquoi la peine maximale d'emprisonnement pour conduite affaiblie est inférieure à celle qui est prévue, je parle de la première offense, pour une condamnation sommaire quelconque. Je parle de l'emprisonnement de trois mois mentionné à l'alinéa a) de l'article 222.

L'hon. John N. Turner (Ottawa-Carleton, ministre de la justice et solliciteur général): De combien est cette peine prévue? De six mois?

M. Hogarth: Oui. Je ne comprends pas pourquoi l'autre est inférieure. Pourquoi n'est-elle pas la même?

M. Turner (Ottawa-Carleton): On ne fait que reprendre l'ancien article 223 l'article 223

[Text]

the old Section 223—the existing Section 223 of the Code—so this distinction has always been made: I would have to look up the historical reasons for that.

It may be, in view of a communication that I have received from Mr. Murphy, and which I would like to study a little more, that we will want to discuss this morning just the substance of the offenses and refer the penalties attached to the offenses to perhaps next Tuesday when I have had a chance to digest Mr. Murphy's memorandum. Mr. Murphy and some other members, as a matter of fact, are disturbed that the penalties attaching to driving while ability to drive is impaired are the same as the penalties attaching to the statutory alcohol content and to the refusal to take the test.

Mr. Hogarth: Well, that concerns me also.

Mr. Turner (Ottawa-Carleton): Mind you, I am prepared to defend that, but I would like to look, in substance, at the very able arguments given to me in a letter by Mr. Murphy. Perhaps, Mr. Chairman, if we could deal with the substance of the offenses and hold over the penalties attaching to the offenses, we could make some decision in principle as to the offenses and deal with the penalties next Tuesday. I say next Tuesday, because I have to be away on Thursday.

The Chairman: Is that agreeable?

Agreed.

The Chairman: Turning to Section 222...

Mr. Turner (Ottawa-Carleton): Just by way of explanation, this is the same as the present impaired driving Section 223. It has to be retained, in our opinion, to cover cases where the impairment is from drugs, where no breath testing equipment is available, where the person is impaired but a sample is refused, and where the blood alcohol level might be below .08 per cent, but the person is in fact impaired. That is the reason for retaining this section.

The Chairman: Shall Section 222 carry?

Mr. Hogarth: Carried subject to the question of penalties.

The Chairman: Mr. Gilbert?

[Interpretation]

actuel du Code criminel. Sa distinction a toujours été établie. Il me faudra en trouver les motifs historiques.

Il se peut, à la suite des explications que j'ai reçues de M. Murphy, et que je voudrais étudier un peu plus, que nous voudrions simplement, ce matin, étudier l'aspect fondamental de ces délits et reporter peut-être à mardi prochain les peines rattachées à ces délits, lorsque j'aurai en la chance d'examiner le mémoire de M. Murphy. M. Murphy et d'autres députés, de fait, sont inquiets du fait que les peines rattachées à la conduite pendant que la capacité de conduire est affaiblie, est la même que les peines se rattachant à la teneur en alcool définie par la loi et au refus de prendre le test de l'ivressomètre.

M. Hogarth: C'est une chose qui me préoccupe aussi.

M. Turner (Ottawa-Carleton): Je suis prêt à en faire la défense mais je voudrais examiner, en substance, les arguments très valables qui me sont donnés dans une lettre de M. Murphy. Monsieur le président, peut-être pourrions-nous nous en tenir aux délits et attendre à la semaine prochaine pour revenir sur les peines rattachées aux délits, et prendre une décision en principe sur la question des délits et traiter des peines mardi prochain. Je dis mardi parce que jeudi, je dois m'absenter.

Le président: Sommes-nous d'accord?

D'accord.

Le président: Passons maintenant à l'article 222.

M. Turner (Ottawa-Carleton): A titre de simple explication, il s'agit du même article que l'article 223 actuel relatif à la capacité de conduire affaiblie. Il faut le conserver, à notre avis, pour couvrir les cas où l'affaiblissement des facultés est causé par des stupéfiants, où il n'y a pas d'ivressomètre de disponible, où la personne a les facultés affaiblies, mais refuse de donner un échantillon, et où la teneur en alcool dans le sang est inférieur à .08 pour cent, mais que les facultés de la personne n'en sont pas moins affaiblies. C'est pourquoi nous devons conserver cet article.

Le président: Est-ce que nous adoptons l'article 222?

M. Hogarth: Adopté sous réserve de la question des peines.

Le président: Monsieur Gilbert?

[Texte]

Mr. Gilbert: Mr. Chairman, I would like to ask the Minister or his assistants for some explanation of the words "care or control". Some people think that they are one and the same and that they are redundant.

Mr. Turner (Ottawa-Carleton): Mr. Scollin would handle that, I think.

Mr. John A. Scollin (Q.C., Director, Criminal Law Section, Department of Justice): The words "care or control", in fact, are lighter than "driving" and contemplate the same kind of situation as contemplated for example in the United Kingdom legislation where the phrase is "in charge of a motor vehicle". There is an Ontario Court of Appeal decision in 1953—Regina against Miller—where it is held that a person charged with care and control may be convicted notwithstanding that he is, in fact, the driver.

Clearly, there are situations where a person may have the effective control of the motor vehicle, the right to direct how it be driven and where it be driven, but his judgment is, in fact, impaired and his ability is, in fact,

• 0950

impaired. The words "care or control" are directed to that sort of situation, the person who is effectively in charge of the operation of a motor vehicle but who is not necessarily the driver.

Mr. Gilbert: Thank you, Mr. Scollin.

The Chairman: Mr. Valade?

Mr. Valade: I would like to make a comment here on the aspect of the drug imputation. I think this is an example where the law may carry some of the restrictions too far. If you have a person who, in fact, is driving a car and has just received a few pills or injections for treatment of a cold or some other affliction, like antihistamine which causes a certain blur for a certain amount of time, I wonder whether we should not allow a safety device here. Some people may have colds and have to take drugs or pills every two or three hours and, for the first half an hour or 20 minutes, they could have a certain effect. I do not think these people should be considered as criminals if they happen to be arrested on these occasions.

I wonder if we should not provide a safeguard here by perhaps including such words as "drugs not prescribed by a doctor" or something similar. I think we would be interfering with an individuals' freedom to class

[Interprétation]

M. Gilbert: Monsieur le président, je voudrais demander au ministre ou à ses adjoints de nous expliquer un peu les mots «garde ou contrôle». Certaines personnes croient qu'ils ont la même signification, donc qu'ils sont redondants.

M. Turner (Ottawa-Carleton): Je crois que M. Scollin peut vous répondre.

M. John A. Scollin (c.r., directeur de la section du droit criminel, ministère de la Justice): Les mots «garde ou contrôle» sont moins explicites que «conduite» et prévoient une situation semblable à celle qui est prévue, envisagée, par exemple, dans la loi du Royaume-Uni, où la phrase dit «responsable d'un véhicule à moteur». Une décision de la Cour d'appel de l'Ontario, en 1953, Regina contre Miller, porte qu'une personne responsable de la garde et du contrôle d'une voiture peut être trouvée coupable sous ce chef d'accusation même si de fait, elle en est le chauffeur.

Il est clair qu'il se trouve des cas où une personne a le contrôle réel du véhicule à moteur, le droit d'ordonner comment le conduire et où, mais, de fait, son jugement et ses facultés sont affaiblis. Les mots «garde ou

contrôle» que nous utilisons visent précisément ce genre de situation où la personne qui est réellement responsable de la marche d'un véhicule à moteur n'est pas obligatoirement le chauffeur.

M. Gilbert: Merci beaucoup monsieur Scollin.

Le président: Monsieur Valade?

M. Valade: Est-ce qu'on me permettrait une observation en ce qui concerne l'allusion au stupéfiant. J'ai l'impression qu'il s'agit là d'un exemple d'un excès de restrictions. Supposons le cas d'une personne qui effectivement conduit une voiture et qui, à cause d'un rhume ou à cause d'un traitement quelconque, vient de recevoir quelques pilules ou quelque injection, comme de l'antihistamine, par exemple, qui peut provoquer un affaiblissement temporaire des facultés.

Je me demande si nous ne devrions pas prévoir ici une mesure de sauvegarde, en ajoutant des mots comme «médicaments non prescrits par un médecin» ou quelque chose du genre. Je crois que nous empiéterions sur

[Text]

him as a criminal merely because he has taken certain drugs prescribed by a doctor.

Mr. Turner (Ottawa-Carleton): I recall a case that went before the Supreme Court of Canada, Mr. Valade, where an accused who was under the influence of drugs administered by a dentist was acquitted by the Supreme Court of Canada on an appeal because he did not have the necessary guilty intent. He did not have *mens rea*.

It was the case of Regina Versus King (1962.) Criminal law reports, page 52. There was an appeal by the Crown. The question before the court was whether *mens rea* or the guilty intent relating to both the act of driving and to the state of being impaired by alcohol or a drug is an essential ingredient of the offence of impaired driving. In other words, do you still have to have the guilty intent, or does the very fact of being under the influence of drugs make it sufficient for a conviction? I am going to read something from Mr. Justice Ritchie's judgment.

It was decided that neither necessary implication or express language disclosed any intention of Parliament to rule out *mens rea* as an essential ingredient of this offence. He was of the opinion, I am quoting his words, that element need not necessarily be present in relation both to the act of driving and to the state of being impaired in order to make the offence complete.

That is to say, that a man who becomes impaired as the result of taking a drug on medical advice without knowing its effect cannot escape liability if he became aware of his impaired condition before he started to drive his car just as a man who did not appreciate his impaired condition when he started to drive cannot escape liability on the ground that his lack of appreciation was brought about by voluntary consumption of liquor or drugs.

In that case the man did not know he was under the influence of a drug and he was acquitted. So the Supreme Court of Canada has attributed guilty intent as being a necessary ingredient in the charge. I think that would take care of your point.

Mr. Valade: Mr. Minister, I suppose you referred to a case that is making jurisprudence.

Mr. Turner (Ottawa-Carleton): Well, it is interpreting the section.

Mr. Valade: It is interpreting the section but there have been many cases, and I have

[Interpretation]

la liberté d'un individu en le classant comme criminel simplement parce qu'il a pris des médicaments prescrits par un médecin.

M. Turner (Ottawa-Carleton): Je me souviens d'un cas porté devant la Cour suprême du Canada, où le prévenu qui avait pris des drogues administrées par un dentiste a été acquitté, après avoir interjeté appel, parce qu'il n'avait pas d'intention criminelle, pas de *mens rea*.

Dans le cas de Regina contre la Couronne (1962), 38 rapports de droit criminel, page 52. Il y a eu appel de la Couronne, il s'agissait de savoir si le *mens rea* ou l'intention criminelle ce qui concerne à la fois l'acte de conduire et l'influence des drogues ou de l'alcool constituait un élément essentiel du délit de conduire pendant que les facultés sont affaiblies. Autrement dit, y a-t-il encore l'intention criminelle, ou bien le fait d'être sous l'influence de drogues suffit-il à la condamnation? Je vais lire une partie du jugement de M. le juge Ritchie.

On a dit que le Parlement n'avait pas eu l'intention directe ou indirecte d'écarter le *mens rea* comme élément essentiel de délit... Il croyait, et je le cite, que cet élément ne doit pas nécessairement être présenté en ce qui concerne à la fois la conduite et l'état de conduire avec les facultés affaiblies pour créer le délit.

C'est-à-dire que la personne dont les facultés deviennent affaiblies après avoir pris des drogues sur l'avis du médecin sans connaître leurs effets ne peut pas échapper à la culpabilité si elle s'est rendu compte de son état avant de commencer à conduire, exactement comme quelqu'un qui ne s'est pas rendu compte de son état lorsqu'il a commencé à conduire, ne peut échapper à la culpabilité parce que son inconscience a été provoquée par une consommation volontaire d'alcool ou de drogues.

Dans ce cas, le monsieur ne savait pas que ces drogues auraient sur lui l'effet en question et il a été acquitté. Donc, la Cour Suprême du Canada a estimé que l'élément capital de l'accusation était le *mens rea*. Je crois que cela répond à votre question.

M. Valade: Monsieur le ministre, vous parlez d'une affaire qui a fait jurisprudence, sans doute.

M. Turner (Ottawa-Carleton): Il interprète l'article.

M. Valade: Sans doute, mais il y a eu beaucoup de cas et je connais personnellement

[Texte]

personal knowledge of some, where people tried to plead that they were taking drugs on the advice of a doctor because of a certain illness or indisposition. These people were brought to court. In such circumstances I think this section is really too strong. I do not think the term "drug" is capable of definition; it can be anything—even a mostic these days.

Mr. Turner (Ottawa-Carleton): Let me put it to you this way. The Supreme Court of Canada has held that if a man did not realize he was under the influence of drugs so as to be impaired he would be acquitted if he does know that he is under the influence of drugs, even though those drugs are medically prescribed, he should not be driving an automobile. So if a man or woman is under the influence of medically-prescribed drugs, either by a dentist, a doctor, or a psychiatrist, and knows that those drugs do impair him, he should not be driving. I do not know how we could make an exception for medically-prescribed drugs. If he does not know that the impairment exists, then the Supreme Court of Canada says he will be acquitted if he does know, he should not be driving, and whether the drugs are medically prescribed or not should not make a difference.

Mr. Valade: My point was similar to that raised by Mr. Hogarth or by someone else the other day. Why should it make him a criminal? Why should we have this person subjected, to an appeal even to the Supreme Court for a ruling whether or not he is guilty. I am referring to a person who has to go to court to defend himself because he has taken a prescribed and lawful drug.

These are my comments on this point. I would hope that some lawyers here would try to be more specific in that regard.

Mr. Hogarth: Mr. Chairman, I was just going to draw to Mr. Valade's attention, if I may, to the fact that the ability to drive must be impaired by a drug. There are many people, for example an epileptic, who would be a danger behind the wheel of a motor vehicle unless they took drugs. In that situation his ability would not be impaired his ability would be preserved by drugs.

Surely any person who, regardless of their physical condition, takes a drug and cannot properly and with reasonable care operate a motor vehicle, is in almost the same category as a person who drinks too much liquor, although perhaps the moral guilt is greater in one case than the other, and that would go to

[Interprétation]

quelques cas où des gens avaient dit au tribunal qu'ils avaient absorbé des drogues sur l'ordonnance du médecin pour une maladie ou une indisposition. Ils ont néanmoins été traduits devant le tribunal. Dans ces conditions, je crois que cet article est vraiment trop sévère. Je ne pense pas que le terme «drogue» puisse être défini; ça pourrait être n'importe quoi, même un cosmétique aujourd'hui.

M. Turner (Ottawa-Carleton): Voici. La Cour Suprême du Canada a jugé si un homme ne se rendait pas compte qu'il était sous l'effet de la drogue, il serait acquitté. S'il le sait, même si les drogues ont été administrées par ordonnance, il ne devrait pas conduire une automobile. Si un homme ou une femme a absorbé une drogue par prescription d'un dentiste, d'un docteur ou d'un psychiatre et qu'il sait qu'elle l'empêchera de conduire, il ne devrait pas conduire. Je me demande pourquoi nous ferions une exception pour les drogues délivrées sur ordonnance. S'il ignore son état, il sera acquitté d'après la Cour Suprême du Canada. S'il le sait, que les drogues aient été prescrites ou non, il ne devrait pas conduire.

M. Valade: Ma question a été semblable à celle, soulevée par M. Hogarth, ou quelqu'un d'autre l'autre jour. Pourquoi cela ferait-il de lui un criminel? Pourquoi cette personne ne serait-elle obligée de faire appel à la Cour suprême pour décider de sa culpabilité ou pas? Je pense à quelqu'un qui doit aller se défendre en cour parce qu'il a pris une drogue légale et prescrite. Voilà mon point de vue. J'espère bien qu'il y a des juristes ici qui pourront donner plus de détails à ce sujet.

M. Hogarth: J'allais simplement signaler à M. Valade que la capacité de conduire doit être diminuée par l'absorption de la drogue. Par exemple, un épileptique constituerait un danger public, à moins qu'il n'ait absorbé de drogues. Dans ce cas, sa capacité à conduire ne serait pas amoindrie par l'absorption du stupéfiant, tout au contraire.

Mais toute personne qui, indépendamment de son état, absorbe une drogue et ne peut vraiment conduire avec sécurité, se trouve à peu près dans la même catégorie de celle qui boit trop d'alcool. Bien qu'évidemment, du point de vue moral, la culpabilité soit plus grande dans un cas que dans l'autre. Il fau-

[Text]

penalty. But surely those persons who cannot properly operate a motor vehicle should be kept off the road.

Unfortunately, this situation often arises where there is a combination of two factors, the antihistamine pill and the three beers. And you do not know which is causing the impairment. So there must be drug in there in order to be able to enforce the law and to get at what we are driving at here.

Mr. Valade: I would just like to say that Mr. Hogarth's intentions are really good. But he talks as a lawyer and I think I should speak as a pharmacist in this regard. Of course, the three beers and the antihistamine pills together can cause the reaction which Mr. Hogarth mentioned. But I am talking about the law-abiding citizen the travelling salesman who may have a sudden cold and takes a pill that will produce the effect of blurring or diminishing of his faculties which he may realize 20 minutes after the absorption of a pill. Sometimes this is the length of time it takes for a reaction.

Now this is the type of case that I am concerned about. I agree with Mr. Hogarth, that a person taking beer and a pill incriminates himself in two ways. I am just talking about the normal person who takes a pill and is arrested because of impairment and has to go to court to prove his good intent. As I said, I am just talking about decent honest citizens who have to go to court to defend themselves, and if they cannot do it or do not do it then, under this law, they become criminals. I do not know why this should be the case. I am sure we all have had occasion to take a pill to effect a cure. This was my objection to it.

The Chairman: Thank you, Mr. Valade. Shall section 222 carry?

Some hon. Members: Agreed.

Mr. McQuaid: May I just ask one question? Have departmental officials had an opportunity to study the submissions made by Judge Ohearn of the Nova Scotia court with reference to this section?

Mr. Turner (Ottawa-Carleton): Mr. Petter Ohearn?

Mr. McQuaid: Yes. His suggestion is that there are some redundancies in the section as it is drafted. He takes exception to the phrase "has the care or control of a motor vehicle whether it is in motion or not". He says it is not necessary to put "care" in there at all—only the words "control of a motor vehicle".

[Interpretation]

draît prévoir une sanction. Mais les personnes dont la capacité de conduire est amoindrie, ne devraient pas conduire. Malheureusement, il arrive assez souvent que deux éléments se retrouvent simultanément, par exemple trois bières, de l'antihistamine, et on ne sait pas d'où vient l'amoindrissement des facultés. Il faut donc que nous inscrivions ici le mot «drogue» de façon à pouvoir appliquer la loi et à parvenir à notre but.

M. Valade: Qu'il me soit simplement permis de dire que les intentions de M. Hogarth sont vraiment bonnes. Mais il parle ici en tant qu'avocat et je pense qu'on me donnera le droit d'exprimer ici le point de vue de pharmacien. Il y va de soi que les trois bières et les pilules antihistamines peuvent provoquer l'effet dont parle M. Hogarth, mais je pense au citoyen honnête, le voyageur de commerce qui a attrapé froid et a absorbé une pilule ce qui aura pour effet de provoquer chez lui certains troubles dont il se rendra compte vingt minutes après l'absorption de la pilule. Une réaction prend parfois ce temps.

C'est le cas qui m'intéresse. Je conviens avec M. Hogarth que la personne qui prend de la bière et une pilule se rend coupable de deux façons. Je parle ici de la personne normale qui ayant absorbé une pilule se trouve arrêtée pour affaiblissement des facultés, il faut qu'il aille au tribunal montrer qu'il n'avait pas d'intention criminelle. Comme je l'ai dit, je songe ici aux citoyens honnêtes qui doivent aller se défendre devant la cour, et s'ils ne le peuvent ou ne le font pas, ils deviennent criminels d'après la loi. Je ne vois pas pourquoi il devrait en être ainsi. Je suis sûr que nous avons tous eu l'occasion de prendre une pilule pour nous soigner. Voilà mon objection.

Le président: Merci, monsieur Valade. L'article 222 est-il adopté?

Des voix: Adopté.

Mr. McQuaid: Une simple question. Est-ce que les fonctionnaires ont eu l'occasion d'examiner le point de vue du juge Peter O'Hearn de la cour de Nouvelle-Écosse à ce sujet?

M. Turner (Ottawa-Carleton): M. Peter O'Hearn?

M. McQuaid: Oui. Il y aurait, selon lui, certaines redondances dans le libellé de l'article. Il n'aime pas l'expression: «ou en a la garde ou le contrôle, que ce véhicule soit en mouvement ou non». Il dit qu'il n'est pas nécessaire d'employer le mot «garde» du tout, seulement les mots «contrôle d'un véhicule automobile».

[Texte]

Mr. Turner (Ottawa-Carleton): We considered that and Mr. Scollin will speak to it, if you would like.

Mr. Scollin: The suggestion that the word "control" could be substituted for "driving" and for "care or control" is quite appealing; it is relatively sensible. The reasons he gives for it, that there have been a lot of quarrels and litigation about duplicity, is not longer so. It has now been clearly decided that the charge must be either "driving while ability impaired by alcohol or drugs—or "care or control while his ability is impaired by alcohol or drugs". So, the reasons he gives for suggesting the change are, in our view, no longer valid. The suggestion that "control" be substituted is quite sensible, but in fact a great deal of jurisprudence has already been built up on the question of driving and on the question of care or control and it was accordingly thought better not to interfere with it, but intrinsically there is a lot of merit to your suggestion.

Mr. Gilbert: Mr. Chairman, I want to ask the Minister or his officials a question. I notice there is an option to proceed by indictment or by summary conviction. I think it would be fair to say that in the majority of cases the Crown proceeds by way of summary conviction and on first offences there is usually a fine imposed. One of the officials told me, Mr. Chairman and Mr. Minister, that the Crown takes the position that they have the option to proceed by indictment and by summary conviction and therefore they photograph and fingerprint a person that is arrested.

Ordinarily if it was a summary conviction they would not have the right to photograph or fingerprint a person. I am wondering about the position of the Minister and his officials. If they are going to proceed summarily—and in the majority of cases they do proceed summarily—should the Crown have the right to determine whether a person is going to be photographed and fingerprinted?

Mr. Turner (Ottawa-Carleton): I will have to answer that in two parts, Mr. Gilbert. First, that the option is in the offence in order to give the Crown the flexibility of weighing the gravity of the charges.

Mr. Gilbert: I have no objection to that.

Mr. Turner (Ottawa-Carleton): There is impairment and impairment.

[Interprétation]

M. Turner (Ottawa-Carleton): Nous avons considéré cela. M. Scollin vous répondra si vous voulez.

M. Scollin: Cette suggestion que l'on a faite voulant que le mot «contrôle» puisse être substitué à l'expression «garde ou contrôle» et à «conduite» est tout à fait logique. Et la raison pour laquelle on la donne, c'est qu'il y a eu beaucoup de litiges à cet égard. Et maintenant on a décidé bien clairement que l'accusation doit être, soit conduire «à un moment où la capacité de conduire est affaiblie par l'effet de l'alcool ou d'une drogue», soit «en a la garde ou le contrôle au moment où la capacité de conduire est affaiblie par l'effet de l'alcool ou d'une drogue». Donc, cette suggestion, d'après nous, n'est plus valable. Et celle voulant que le mot «contrôle» y soit substitué est tout à fait logique, mais il y a beaucoup de jurisprudence sur la question de la conduite, de la garde et du contrôle, et on a donc cru qu'il valait mieux ne pas s'en mêler, mais, à la base, votre suggestion est très valable.

M. Gilbert: Monsieur le président, je voudrais poser une question au ministre ou à ses fonctionnaires. Je constate ici qu'il y a un choix. On peut procéder soit par déclaration sommaire de culpabilité ou accusation pure et simple. Dans la plupart des cas, la Couronne réfère la déclaration sommaire de culpabilité et, pour un premier délit, elle se contente d'imposer une amende. L'un des fonctionnaires a dit, monsieur le président, et monsieur le ministre, que la Couronne juge qu'elle a le choix de procéder par accusation ou par déclaration sommaire de culpabilité. En conséquence, elle photographie et prend les empreintes digitales de la personne arrêtée.

S'il s'agissait d'une déclaration sommaire de culpabilité, elle n'aurait normalement pas le droit de faire photographier la personne et de prendre ses empreintes digitales. Je me demande quel est le point de vue du ministre et de ses fonctionnaires là-dessus? Si, comme dans la plupart des cas, on procède par déclaration sommaire de culpabilité, est-ce que la Couronne a vraiment le droit de décider de faire photographier et de prendre les empreintes digitales de la personne?

M. Turner (Ottawa-Carleton): Je devrai répondre à cette question en deux parties: d'abord, le choix est prévu quant aux délits, de façon à donner à la Couronne l'occasion de mesurer la gravité de l'accusation.

M. Gilbert: Je n'y vois pas d'inconvénients.

M. Turner (Ottawa-Carleton): Il y a affaiblissement et affaiblissement.

[Text]

Mr. Gilbert: Right.

Mr. Turner (Ottawa-Carleton): The answer to your question does not lie in the optional feature of Section 222, for instance; it lies in the Identification of Criminals Act. The interpretation given to the Identification of Criminals Act is that if there is an option in the Crown to either proceed by way of indictment or summary proceeding, then those sections of the Identification of Criminals Act which apply to indictment, whereby fingerprints are taken, also apply to the optional situation. That is to say, before the Crown exercises the option the fingerprints are taken. So, in the option situation the answer to your question does not lie within the rephrasing of the Criminal Code, the answer lies in an amendment to the Identification of Criminals Act which is currently before the Solicitor-General. This is the same problem that arises if an option is given under the Narcotic Control Act with respect to a prosecution in connection with marijuana. You do not solve the fingerprint or record problem by making summary proceedings mandatory or by having an option as between indictment and summary proceeding; you have to reconsider the whole of the Identification of Criminals Act. So, the answer to your question lies there and I hope that it is discussed at an early stage.

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Mr. Gilbert: Thank you, Mr. Minister.

Mr. Murphy: Mr. Chairman, I wish to inquire of the Minister or his officers whether they have given any consideration to an attempt to amend these "impaired" provisions to make it a little easier on the fellow that is driving along and suddenly realizes he is not in shape to drive his car and pulls off the road, turns off the ignition and tries to take a little nap, or does something other than get out and lie on the road beside the car. Five minutes later he is interrupted by a police officer and found to be "impaired" and also "in care or control". Is there any way to alleviate this situation without weakening the intent and purpose of the section?

Mr. Turner (Ottawa-Carleton): This problem of the man who belatedly realizes that he should not be driving his car at all and then...

Mr. Murphy: ... gets out of the way.

[Interpretation]

M. Gilbert: En effet.

M. Turner (Ottawa-Carleton): La réponse à votre question ne se trouve pas dans l'aspect choix de l'article 222, elle se trouve dans la *Loi sur l'identification des criminels*. L'interprétation donnée à cette loi, c'est que si la Couronne a le choix de procéder par accusation ou par déclaration sommaire de culpabilité, les articles de la *Loi sur l'identification des criminels* qui s'appliquent à l'accusation pure et simple, qui permet de prendre des empreintes digitales, vaut aussi pour le choix. Autrement dit, avant que la Couronne n'ait exercé son choix, les empreintes digitales ont été prises. La réponse à votre question ne se trouvera donc pas dans le nouveau libellé du Code criminel. Il s'agirait plutôt de modifier la Loi sur l'identification des criminels qui est actuellement en train d'être examinée par le Solliciteur général.

C'est le même cas qui se pose lorsqu'il y a un choix, par exemple aux termes de la Loi sur les stupéfiants, lorsqu'il y a des poursuites en ce qui concerne la marijuana. On ne règle pas la question des empreintes digitales ou la question du dossier criminel en prescrivant obligatoirement que l'on procédera par déclaration sommaire de culpabilité ou en permettant de choisir entre l'accusation pure et simple et la déclaration sommaire de culpabilité. Il faudra revenir entièrement sur la question de la Loi sur l'identification des criminels. C'est là que se trouve la réponse à votre question. Et j'espère que nous aurons l'occasion d'en parler bientôt.

M. Gilbert: Merci, monsieur le ministre.

M. Murphy: Monsieur le président, je voudrais demander au ministre ou à ses hauts fonctionnaires s'ils ont songé à essayer de modifier cette situation portant sur les facultés «affaiblies», afin de rendre la chose plus facile à celui qui conduit sa voiture, et soudainement se rend compte qu'il n'est pas en état de conduire, arrête la voiture sur le côté de la route et essaye de dormir un peu, ou enfin fait quelque chose d'autre que s'étendre dans l'herbe à côté de la voiture. Cinq minutes plus tard un policier interrompt cette sieste et découvre qu'il a les facultés «affaiblies» et qu'il a «la garde ou le contrôle» d'une voiture. Est-ce qu'il y aurait possibilité d'amoinrir la portée de ces dispositions?

M. Turner (Ottawa-Carleton): Il y a le problème de cet homme qui, un peu tard, se rend compte qu'il ne devrait pas conduire une voiture, et alors...

M. Murphy: ... quitte la route.

[Texte]

Mr. Turner (Ottawa-Carleton): When I use the word "man" I include the word "female" as well. I did not want to attribute the sole blame to the men. As Bernard Shaw said, if you want equal rights I will not carry your umbrella any more. It is an extension of a subjective area to attestable allegations and the problem of credibility.

We have the problem of credibility here. Cases may well occur where the drinking driver becomes aware that he should not be driving a car and he pulls over to the side of the road, turns his ignition and says to himself, "I think I will take a little snooze here and recover". The problem is that he has already been a danger to the public. He may have been lucky in that he has not collided with a tree or run into somebody. He has already been a danger to the public.

A private bill, Bill C-160, was put forward by Mr. W. Nesbitt, the member for Oxford, and I think Mr. Nesbitt's bill—which I expect the Committee will be reviewing at some time—is open to this objection because it would be a complete defence to a drinking and driving charge under Mr. Nesbitt's proposal if the vehicle were not found in motion or if the accused were to establish that having realized his condition he either did not start his vehicle or, having driven it, stopped his vehicle and had no intention of continuing to drive until he was in shape to do so or, to put it in legal terms, until he was lawfully able to do so.

We are concerned about the fact that as a practical matter it is virtually impossible to refute the mere statement of the accused person, and it would effectively bring to a halt most prosecutions where a person is found impaired and in charge of a stationary motor vehicle. What he ought to do is get out of the car.

Mr. Hogarth: Or get in the back seat.

Mr. Turner (Ottawa-Carleton): I am not going to endorse that publicly, Mr. Hogarth.

Mr. Hogarth: Or get out of the driver's seat.

Mr. Turner (Ottawa-Carleton): He should get out of the driver's seat. The courts have held that once he is out of the driver's seat he is no longer in care or control of the motor vehicle. All he has to do is get out of the front seat.

[Interprétation]

M. Turner (Ottawa-Carleton): Lorsque j'ai dit «un homme» ça comprend les hommes et les femmes. George Bernard Shaw a dit: «Si tu veux des droits égaux, je ne porterai plus ton parapluie». Voilà la portée de cette disposition.

Il y a le problème de voir si le tout est plausible. Il se peut que des cas, des circonstances arrivent où un chauffeur en état d'ébriété se rend compte qu'il ne doit plus conduire sa voiture, arrête la voiture sur le bord de la route et songe à faire une sieste à un moment donné. Le problème qui se présente alors c'est qu'il a déjà constitué un danger pour le public. Et c'est heureux qu'il n'ait pas heurté un piéton, ou causé une collision. Enfin, il a eu la chance pour lui.

Un bill privé, le bill C-160 présenté par M. W. Nesbitt, je pense, le député d'Oxford. Ce bill—le Comité l'étudiera plus tard—contourne ces difficultés en vertu de la proposition de M. Nesbitt. Ce sera alors à la défense de voir ainsi l'accusé établir que, s'étant rendu compte alors de son état, il a arrêté sa voiture, et il n'avait pas du tout l'intention de poursuivre sa route jusqu'à ce qu'il se trouve en bon état, ou jusqu'à ce qu'il puisse légalement être en mesure de le faire.

Sur le plan pratique, il est à peu près impossible de réfuter ces déclarations de l'accusé et de mettre fin, de façon assez efficace, à toute poursuite où une personne est trouvée en état d'ébriété, a la garde ou le contrôle d'un véhicule automobile. Ce qu'il devrait faire, c'est sortir de la voiture.

M. Hogarth: Ou s'asseoir sur la banquette arrière.

M. Turner (Ottawa-Carleton): Je ne veux pas appuyer cette idée publiquement, monsieur Hogarth.

M. Hogarth: Ou quitter la banquette du conducteur.

M. Turner (Ottawa-Carleton): Enfin, il devrait se retirer du siège du conducteur. Une fois qu'il n'occupe plus ce siège, bien entendu, il n'a plus la charge ou le contrôle du véhicule automobile. Tout ce qu'il a à faire, c'est de ne plus occuper la banquette du conducteur.

[Text]

Mr. Hogarth: Just to clear up this point, the presumption arises out of Section 224 (2), which reads:

(2) For the purpose of sections 222 and 223, where a person occupies the seat ordinarily occupied by the driver of a motor vehicle he shall be deemed to have the care or control of the vehicle unless he establishes that he did not enter or mount the vehicle for the purpose of setting it in motion.

So, if he is in the back seat that presumption no longer applies.

Mr. McQuaid: The courts have convicted him, Mr. Chairman, when he has moved from the driver's seat into the back seat and was found by the police asleep there or in such a condition that he was unable to drive, he has been convicted with respect to having care or control.

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Mr. Turner (Ottawa-Carleton): I want to suggest to you again that this is preventive legislation, and it would be virtually impossible for the Crown to rebut a situation such as Mr. Murphy describes. If the man has care or control of the vehicle, even if the vehicle is stationary, it would be impossible for the Crown to rebut his statement that he did not intend to drive the car again. He might well have decided that he will wait an hour, starts up his car again, thinking that he is back in condition, and his alcohol content or his impairment may be just as severe as it was. You leave him in a situation where within his judgment he can restart that automobile again. What he should do, if he has been fortunate enough not to have had an accident before he pulls over to the side of the road, is surely to turn off the motor, take out the key, and get out of the car—just take himself away from the care and control.

If I may, I want to read to the Committee what the Supreme Court of Canada had to say about this particular situation, because I believe that in legislation that is designed to curb a growing menace on the highway it would be a retrograde step to widen the area of the exemptions in this "impaired driving" section by enacting an exemption whereby the practical prospects of the court arriving at the truth are rendered almost impossible—certainly negative.

In *Saunders v. The Queen* (1967) 3 C.C.C. at 278, the Supreme Court of Canada held, in a case under Section 223, which is the new Section 222—care or control of a motor vehicle while impaired—that it was irrelevant that the motor vehicle could not move under its

[Interpretation]

M. Hogarth: En somme, la présomption est fondée sur l'article 224(2), qui se lit comme suit:

(2) Aux fins des articles 222 et 223, lorsqu'une personne occupe la place ordinairement occupée par le conducteur d'un véhicule à moteur, elle est réputée avoir la garde ou le contrôle du véhicule, à moins qu'elle n'établisse qu'elle n'est pas entrée ou qu'elle n'a pas monté dans le véhicule afin de le mettre en marche.

Si elle est sur la banquette arrière, cette présomption ne vaut plus.

M. McQuaid: Mais les tribunaux l'ont condamné, monsieur le président, même lorsqu'il est passé du siège avant au siège arrière. S'il est trouvé couché au fond de sa voiture sur la banquette arrière, par la police, il est arrivé qu'on l'ait condamné, malgré tout, parce qu'il avait la garde ou le contrôle de la voiture.

M. Turner (Ottawa-Carleton): Il ne faut pas oublier qu'il s'agit d'une loi préventive, et j'insiste là-dessus, pour que la Couronne puisse contredire le point de vue de M. Murphy. Il serait à peu près impossible de procéder, si l'accusé pouvait prouver qu'il n'avait pas l'intention de recommencer à conduire. Il pourrait, par exemple, s'arrêter une heure et au bout d'une heure repartir et pourtant il pourrait toujours être aussi ivre qu'il l'était auparavant. Vous le laissez juger s'il peut ou non continuer à conduire. On le laisse dans une situation où selon lui il peut remettre sa voiture en marche. Ce qu'il devrait faire, au contraire, s'il a eu la veine de s'arrêter au bord de la route sans causer d'accident, c'est d'arrêter son moteur, enlever le contact, et sortir de la voiture; tout au moins s'éloigner de la voiture.

Voici, d'ailleurs, ce que disait la Cour suprême, à ce sujet. Je crois, en effet, qu'en ce qui concerne une loi destinée à diminuer le nombre d'accidents de la route, ce serait rétrograde d'accroître le nombre d'exemptions prévues à cet article en ajoutant une exemption d'après laquelle la capacité pratique d'intervention du tribunal, pour en arriver à la vérité, serait annulée, ou du moins amoindrie.

Dans *Saunders contre la Reine* (1967), 3 C.C.C., page 278, la Cour suprême du Canada a décidé que dans un cas qui tombe sous le coup de l'article 223, soit le nouvel article 222, que pour la garde ou le contrôle d'une voiture automobile lorsque la personne est affaiblie, il

[Texte]

own power, and stated, in relation to the drinking and driving provisions of the Code as follows—and I am quoting the Court:

... these and the other related provisions of the Code...

emphasized

.. the determination of Parliament to strike at the very root of the evil, to wit, the combination of alcohol and automobile, that normally breeds this element of danger which this preventive legislation is meant to anticipate.

I am concerned that the person who pulls over to the side of the road but who remains in care and control of his vehicle—a person whose judgment is impaired by alcohol—may constitute a public danger, at least when he is in the motor vehicle, because of the possibility that he come to an ill-considered conclusion about a supposed improvement in his driving ability. That is the view we take of it, Mr. Chappell.

Clause 16, proposed Section 222, agreed to.

On Clause 16, proposed Section 223(1)—Sample of breath where reasonable belief of commission of offence under s. 222.

Mr. Chappell: Some of my remarks will overlap with Section 224; they must, of necessity, for me to make my point.

Under 224 we accept point 8 or .08—depending on how one looks at it—as determined by one machine and one operator.

Therefore, we have a mechanical device sometimes being operated by an inexperienced operator and there are no back-up tests provided for; and I say, with respect, that I think the Minister was being humorous when he said that the defence lawyer could take a bottle with him, because by the time the defence lawyer got there it would be too late.

We have decided to be very tough with these drivers, and perhaps, as Mr. MacGuigan said the other day, we have to think up a new crime—that of taking a car on the highway with so much alcohol in your blood. But a great many innocent people are going to suffer, and I wish to direct your attention to those—the innocent people.

Let us suppose a carload of people is injured and the civil award could be \$200,000 to \$500,000. How much insurance will be left? There is no question at all that if a man is convicted of ability impaired it will be pleaded again in the civil case not the fact that he was

[Interprétation]

importe peu que la voiture puisse se déplacer par ses propres moyens, et déclare, au sujet des dispositions du Code relative à la conduite en état d'ivresse, ce qui suit, et je cite: «... ces dispositions et autres dispositions connexes du code...» mettent en évidence «... la détermination du Parlement de frapper à la racine du mal, c'est-à-dire, à la conduite en état d'ivresse, qui cause habituellement un élément de risque que cette mesure préventive veut éliminer.»

Ce qui me préoccupe, c'est que la personne qui s'arrête sur le bord de la route, et conserve la garde et le contrôle de son véhicule, une personne dont les facultés sont affaiblies par l'alcool peut représenter un danger public, du moins lorsqu'il est dans le véhicule, car il est possible qu'il pourra en arriver à une conclusion erronée quant à l'amélioration de sa capacité de conduire. Voilà notre point de vue sur cette question, Monsieur Chappell.

L'article 16 du Bill relatif au nouvel article 222 du Code est adopté.

L'article 16 du Bill relatif au nouvel article 223 (1) du Code—un échantillon d'haleine peut-être prélevé lorsqu'il y a un motif raisonnable de croire qu'une infraction à l'article 222 a été commise.

M. Chappell: Mes commentaires s'étendront à l'article 224, mais c'est nécessaire si je veux me faire comprendre.

Aux termes de l'article 224, nous acceptons .8 ou .08, selon le point de vue, établi par une machine et un opérateur.

Aussi, il s'agit ici d'un instrument dont se sert parfois un opérateur sans expérience; on ne prévoit pas de contrôle; et en toute déférence, je pense que le ministre plaisantait un peu lorsqu'il a dit que l'avocat de la défense pourra emporter une bouteille avec lui, car lorsque l'avocat de la défense arrivera, il sera déjà trop tard.

Nous avons donc décidé d'être sévères envers ces conducteurs, et comme le disait M. McGuigan l'autre jour, nous avons inventé un nouveau crime, c'est-à-dire, de conduire une voiture sur la grande route avec une certaine teneur d'alcool dans le sang. Mais beaucoup de personnes innocentes vont en souffrir, et ce sont elles que je porte à votre attention.

Supposons que les passagers d'une voiture soient blessés et que les dommages intérêts accordés soient de \$200,000 à \$500,000. Qu'est-ce qu'il restera de l'assurance? Il ne fait aucun doute que si la personne est reconnue coupable d'avoir conduit alors que ses

[Text]

convicted—but they will again allege that his ability was impaired and will use the same evidence. If they are successful the insurance

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coverage is cut to \$35,000, at least in Ontario, and suspect it is probably similar in all the provinces. Therefore, these innocent people recover only \$35,000 to share for a claim of \$200,000.

But that is not all. Let us go back to Section 224 under which, with a reading of .08, it is a crime—a serious crime. It is related to driving. There is a fair body of jurisprudence to the effect that if you commit a crime related to driving you cancel your insurance. Some lawyers may argue against me, but I know there are such cases and I have used them successfully at times. I fear that insurance companies will immediately begin to use Section 224 as a defence.

At the moment I am directing my mind to these innocent people who will not be able to recover more than the standard limit of \$35,000. We have the type of case where a man possibly was not impaired at all at .08 and certainly some are not. As I mentioned previously I got a man off once before the Chief Justice with 2.2.

An hon. Member: He was dead.

Mr. Chappell: That is what the Crown expert said, that he was dead; but he was not. He was exonerated completely.

In any event, with this .08 the evidence is adduced in some cases by an inexperienced operator, by one machine and without a back-up test. If the insurance companies should use that, as I anticipate they will, to avoid these large claims, there is no evidence to meet that chemical test; there is no evidence at all to meet it. It is there; it was .08; it is a criminal offence; and may possibly be a good case to deny his insurance.

If it must stay like this there should still be a back-up test, such as of the urine, or the blood, that can be offered; but, second, I think the Minister of Justice should warn the various attorneys general in Canada of this proposed change so that they may rethink their insurance legislation, to ensure that we may not be cancelling insurance for many drivers in Ontario, and thus avoiding claims

[Interpretation]

facultés étaient amoindries, il en sera certainement question dans la cause civile, non pas le fait qu'elle a été reconnu coupable, mais on

insistera sur cet amoindrissement des facultés avec l'appui des mêmes preuves.

S'ils ont gain de cause, la protection de l'assurance tombera à \$35,000 en Ontario sinon ailleurs. Ainsi, donc, les personnes blessées devront se partager \$35,000 alors que la poursuite était de \$200,000.

Et ce n'est pas tout. Revenons à l'article 224, où l'on dit que si la teneur en alcool est de .08, c'est un crime, et un crime grave, par rapport à la conduite d'une automobile. Il y a déjà beaucoup de jugements selon lesquels si on commet un crime par rapport à la conduite d'une automobile, on perd ses assurances. Je sais que tous les avocats ne seront pas de mon avis, mais je sais que ces causes existent pour y avoir recouru à l'occasion. Je crains que les compagnies d'assurance se mettront immédiatement à se défendre en vertu de l'article.

Je pense en ce moment aux innocents qui ne pourront pas recouvrer plus que la limite de \$35,000. Voici donc un cas où un homme dont les facultés n'étaient peut-être pas affaiblies du tout, avec une teneur de .08, comme c'est sûrement le cas pour certains. J'ai déjà fait acquitter quelqu'un devant la Cour suprême d'Ontario, qui avait une teneur d'alcool de 2.2.

Une voix: Il était mort.

M. Chappell: C'est ce qu'a dit l'expert de la Couronne, mais il ne l'était pas.

Quoiqu'il en soit, avec cette norme de .08, il arrive, dans certains cas, que les preuves soient apportées par un opérateur sans expérience, par un seul appareil, et sans test de contrôle.

Si les compagnies d'assurance utilisent ces preuves, comme je crois qu'elles le feront, on ne peut pas invoquer d'autres preuves. La preuve est faite; on dit que la teneur était de .08, ce qui est un délit criminel; et les compagnies d'assurance y auront recours pour priver la personne de son assurance.

Si l'on veut maintenir ce système, on devra prévoir un contrôle, un test de l'urine ou une analyse de sang, qui serait offert au prévenu. En outre, le ministre de la Justice devrait prévenir la plupart des procureurs généraux du Canada de ce changement, de façon à ce qu'ils puissent revoir leurs lois sur les assurances et s'assurer qu'on ne privera pas un grand nombre de conducteurs de l'Ontario, de

[Texte]

which ought ordinarily to have been recoverable.

The Chairman: Thank you, Mr. Chappell.

Mr. Turner (Ottawa-Carleton): I wish to make a comment, and I will start with the last part of Mr. Chappell's statement which is what I consider to be the kernel of the legitimacy of his remarks.

We do not have jurisdiction under the criminal law to legislate insurance warranties or exclusions under insurance policies. I agree with him that as a result of these amendments it will be up to the provinces to modify the statutory conditions attaching to automobile insurance policies.

There is nothing new in what he says. The exemption from liability under the coverage of a policy now applies to the impaired driving situation under Section 223 and Section 222 of the present Code. The only thing that would be extended by these amendments would be the exemption from liability under an insurance policy, possibly, under the new Section 224. Now, that is a civil consequence, perhaps, of the criminal law, falling clearly within provincial jurisdiction, and it is the responsibility of the provincial governments and the responsibility, of course, of the automobile insurers to look at it.

Relative to a back-up test, it is open in this legislation for the accused, through his lawyer, to challenge the test itself, the machine, the certificate of analysis and to cross-examine the analyst. And if there were any reason for the defence counsel to question the accuracy of the machine he would have plenty of scope within this bill to do it.

Mr. Chairman: Order, please.

Mr. Turner (Ottawa-Carleton): I want to take issue very strongly with Mr. Chappell's remark that .08 does not necessarily mean impairment for some people.

I can anticipate that Mr. Murphy will want to bring this up on Tuesday when we are talking about penalties.

Mr. Deakon: I will be a guinea pig. I will show you right now.

The Chairman: Order, please.

Mr. Turner (Ottawa-Carleton): Yesterday was a good day for Irishmen, Mr. Deakon, but it might not be as good today.

[Interprétation]

leur assurance, et ainsi permettre aux compagnies d'assurance d'éviter des réclamations qui seraient parfaitement fondées autrement.

Le président: Merci, monsieur Chappell.

M. Turner (Ottawa-Carleton): Je voudrais revenir sur la dernière partie de la déclaration de M. Chappell, que je considère le point clé qui justifie ses remarques.

Nous n'avons pas la compétence voulue en vertu du droit criminel pour légiférer sur les garanties d'assurance ou les exemptions aux termes des polices d'assurance. J'en conviens avec vous qu'à la suite de ces modifications il incombera aux provinces de modifier les conditions statutaires relatives aux polices d'assurance automobile.

Il n'y a rien de nouveau dans ce que vous dites; l'exemption de responsabilités de la police d'assurance s'applique présentement à une personne qui conduit en état d'ébriété en vertu des articles 223 et 222 du Code actuel. La seule chose dont la portée est étendue en vertu de cet amendement, c'est cette exemption des responsabilités d'une police d'assurance en vertu du nouvel article 224. C'est donc une conséquence sur le plan civil du droit criminel, qui relève directement des compétences provinciales, et c'est au gouvernement provincial et aux compagnies d'assurance automobile qu'il incombe d'étudier la question.

Pour ce qui est du test de contrôle, aux termes de cette mesure, c'est à l'accusé, par l'entremise de son avocat, de mettre en doute les résultats de l'ivressomètre, le certificat d'analyse et de contre-interroger l'analyste. S'il y a des motifs de la part de l'avocat de la défense, de mettre en doute la précision de l'appareil, il aura la liberté de le faire en vertu des dispositions de cette loi.

Le président: A l'ordre!

M. Turner (Ottawa-Carleton): Je veux prendre à partie une des remarques de M. Chappell selon qui la norme de .08 ne veut pas nécessairement dire que certaines personnes sont en état de capacité affaiblie.

J'imagine que M. Murphy voudra relever la chose mardi lorsque nous en serons aux peines prévues, alors aussi bien étudier maintenant ce qu'il en est.

M. Deakon: Je vais faire le cobaye, je vais vous montrer immédiatement...

Le président: A l'ordre.

M. Turner (Ottawa-Carleton): Hier, c'était une excellente journée pour les Irlandais mais peut-être pas aujourd'hui. Feu le doc-

[Text]

The late Dr. Ward Smith who was the Director of the centre for forensic sciences for the Government of Ontario, and who was an expert in the matter of drinking and driving, deduced the following general rule. If a driver is to have little or no alcohol in his system while driving, he should drink one drink less than the number of hours he has spent drinking. For example, the blood alcohol level of a driver would not be expected to exceed .05 per cent after a four-hour evening when the drinking was not done in the latter part of the evening. The drinks referred to are standard drinks, such as 1½ ounces of 70 proof whisky, which is the equivalent to a 12-ounce bottle of 9 proof beer, or three ounces of fortified wine.

In a series of tests designed by Dr. Ward Smith for the purposes of a CTV film which was entitled "Point O Eight"—which is the percentage we are talking about—which involved only experienced racing drivers, it was found that under the conditions of this study, a one-hour drinking period and a one-hour wait, three drinks—1½ ounce of whisky, 12 ounces of beer, 3 to 6 ounces of wine—would generally result in a level of .05 per cent alcohol in the blood of a 160-pound person. In this study, changes in driving ability were shown in all the drivers, skilled racing drivers, at levels between .04 per cent and .08 per cent.

Dr. Maxwell, Assistant Professor of Pathology at Dalhousie University, has said that 100 milligrams percentage, that is .1, is approximately equivalent to six one-ounce drinks at the end of an hour, or eight at the end of two hours.

Dr. Coldwell, now the Director of the centre of forensic sciences in the Government of Ontario, reporting on the Grand Rapids Study which I cited to the Committee earlier, listed findings as follows: Alcohol blood level of .04 per cent—one or two drinks, slight impairment. Alcohol blood level of .06 per cent—two to three drinks, risk twice that of none. Alcohol blood level of .08 per cent—three to four drinks, significant impairment. Alcohol blood level of .1 per cent—four to five drinks, significant increase of impairment. Alcohol blood level of .15—six to 10 drinks, all drivers seriously impaired.

The Greater Winnipeg Safety Council Study shows a 170-pound man drinking 5½ ounces of 100 proof liquor, or three and a half 12-ounce bottles of beer within an hour would have a blood alcohol concentration of approximately .05 per cent. This same man drinking 8½ ounces of 100 proof liquor, or 6½ bottles of

[Interpretation]

teur Ward Smith, qui était directeur du centre d'études de médecine légale de l'Ontario, spécialiste en matière d'ivresse au volant, avait établi la règle suivante: Si un conducteur veut avoir peu ou pas d'alcool dans le sang lorsqu'il conduit il doit prendre un verre de moins que le nombre d'heures qu'il a passé à boire.

Ainsi le contenu d'alcool du sang d'un conducteur n'excédera pas 5 p. 1000 après une soirée de quatre heures lorsqu'il n'a pas bu vers la fin de la soirée. Il s'agit des consommations habituelles, soit une once et demie de whisky ou encore une bouteille de bière ou trois onces de vin cuit.

Dans l'ensemble des épreuves établies par le docteur Ward Smith aux fins d'un film de la CTV intitulé «Huit pour mille», c'est le sujet dont nous parlons ici, passées uniquement pas des conducteurs de voitures de course à la suite d'une période d'une heure et d'une heure d'attente où ils ont bu trois consommations, une once et de mie de whisky, 12 onces de bière, de trois à six onces de vin, ont donné comme résultat un niveau de 5 p. 1000 dans le sang d'une personne pesant 160 livres. Dans cette étude la modification sur l'habilité à conduire, il a été démontré que pour tous les conducteurs, des pilotes de course une teneur en alcool de 4 à 8 p. 1000.

Le docteur Maxwell, professeur adjoint de pathologie à l'Université de Dalhousie, a déclaré que 100mm, ce qui représente un pourcentage de 1 p. 1000 est à peu près l'équivalent de 6 consommations de 6 onces à la fin de deux heures.

Le docteur Coldwell, directeur du Centre de médecine légale du gouvernement de l'Ontario, faisant un rapport sur l'étude de Grand Rapids dont j'ai fait part plus tôt au Comité, disait qu'au niveau de 4 p. 1000 une ou deux consommations: facultés légèrement affaiblies, niveau de 6 p. 1000, soit de deux à trois consommations, risque doublé. Niveau de 8 p. 1000, soit 3 à 4 consommations, facultés affaiblies considérablement. Niveau de 10 p. 1000, soit 4 à 5 consommations, facultés affaiblies de façon très marquée. Niveau de 15 p. 1000 tous les conducteurs ont leurs facultés gravement affaiblies.

L'étude du Conseil de Sécurité Routière de Winnipeg avec un homme de 170 livres qui a bu 5 onces et demie d'alcool à 100 degrés de preuve, ou trois bouteilles et demie de 10 onces de bière dans une heure aurait un taux de concentration d'environ 5 p. 1000 dans son sang. Le même homme, lorsqu'il prend 8

[Texte]

beer within the same period would have a blood alcohol concentration of .1 per cent.

The Grand Rapids Study indicates that in their opinion, quite conclusively—and this is supported by the studies of the Canadian Bar Association, the Canadian Medical Association which wanted the figure lowered to .05 per cent, and the United Kingdom legislation—there is virtually universal impairment at .08 per cent.

• 1025

I feel that the evidence is medically secure that anyone who has drunk enough, quickly enough, to mobilize an alcohol content of this degree is impaired.

Mr. Chappell: With respect, Mr. Turner, it is not quite as definite as you say. We carried out some testing in Toronto at the Medical Legal Association, with Dr. Ward Smith in charge. He tested lawyers and the doctors and it was found firstly that the breathalyzer was not always accurate. In one case where it made a tremendous error, the defence was that the person must have thrown the drink in the urinal, or in a flower pot. In other words, the lawyers who were being observed and tested were not telling the truth. That was their defence to the errors of the breathalyzer.

There was also evidence of other tests being made where some people, sometimes because of a diabetic condition, developed a great tolerance, and some people are not impaired with considerably higher than .1. Now regardless of whether that be true or not, my point is this, that if a man shows .08 by that machine and one policeman says, "His eyes were glassy and his speech was thick and I took him in", that evidence will be used on the civil case. He alone can say, "I was not impaired, I was able to handle that car."

Now I am talking about the effect on the insurance. We indirectly could be destroying many large policies throughout Canada and taking away the right of the innocent victims to recover.

I appreciate it is a provincial matter, but I think it should be brought clearly to the attention of the Attorneys General of the provinces so they can prevent this dissipation of these large policies. In the case to which I referred as an example, where one man was travelling alone and the machine showed .08 and the policeman said his eyes were glassy

[Interprétation]

onces et demie d'alcool ou six bouteilles et demie de bière pendant la même période aurait un taux de concentration de 1 p. 1000.

Cette étude de Grand Rapids nous indique, à mon avis, de façon vraiment concluante et cela est appuyé par les études du Barreau canadien et l'Association médicale du Canada qui désirait que le niveau soit réduit à 5 p. 1000 par la législation du Royaume-Uni qu'il y a donc un état d'affaiblissement général des facultés au niveau de 8 p. 1000. Je suis d'avis

que les preuves sont faites, sur le plan médical que quiconque a bu assez, et assez rapidement pour atteindre une concentration en alcool à un tel niveau, a nécessairement ses facultés affaiblies.

M. Chappell: En toute déférence, M. Turner, vous me permettez de dire que ce n'est pas si précis que vous semblez le croire. Nous avons nous-mêmes procédé à certaines épreuves à Toronto à l'Association de médecine légale—le docteur Ward Smith était justement chargé de ces expériences. Il a fait des expériences sur des avocats et sur des médecins, que l'ivressomètre n'était pas toujours exact. Et dans un cas il s'était trompé du tout au tout. On a jugé qu'il avait dû jeter cette machine dans l'urinoire ou dans le pot à fleurs.

On a aussi parlé d'autres épreuves qui avaient été faites où d'autres personnes, parfois des diabétiques, s'étaient accoutumées et n'étaient pas du tout ivres, même si la teneur en alcool du sang était supérieure à 10 p. 1000. Que cela soit exact ou pas, voici ce que je prétends: si la teneur d'alcool révélée par la machine est de 8 p. 1000 et qu'un agent de police dit que la voix de la personne est pâteuse et que ses yeux sont vitreux et je l'ai donc arrêté, et que ce témoignage est invoqué dans un procès civil, lui seul peut dire: «je n'étais pas ivre, je pouvais conduire ma voiture.»

Je parle de l'effet que cela peut avoir sur la société d'assurance. Nous pourrions ainsi influencer un grand nombre de polices d'assurance dans notre pays et supprimer le droit à des dommages-intérêts à une victime innocente.

Je conviens que c'est là une question de compétence provinciale, mais il faudrait la signaler nettement aux procureurs généraux des provinces de façon à ce qu'on puisse éviter ces inconvénients concernant les assurances. Dans le cas dont je parlais, j'aimerais citer un exemple. Un homme seul pour lequel l'ivressomètre révélait une teneur en alcool

[Text]

and his speech was thick—of course he will say that if the machine said that, you can take that for granted—he has nothing but his word against the policeman who will quite often just parrot those words.

The machine could possibly be in error and out of adjustment, and perhaps the operator is inexperienced. He has nothing that he can produce whatever to save his insurance. And there is no possible evidence he can put his hands on to overcome this tremendous onus that will follow out of Section 224 in a civil case.

Mr. Turner (Ottawa-Carleton): I will certainly give an undertaking to write to the provincial Attorneys General to ask the Superintendents of Insurance in the provinces to look at the effects of this amendment on the civil liability under insurance coverage.

Mr. Hogarth: Mr. Turner, you mentioned tests done by the Canadian Bar Association. Did they do some particular tests? I know they had a special committee on this, but to my knowledge they did not do any testing.

Mr. Turner (Ottawa-Carleton): They reviewed the evidence and came to the position that .08 was the realistic figure.

Mr. Hogarth: Yes, but I do not think they did any tests or research.

Mr. Turner (Ottawa-Carleton): They reviewed the evidence.

Mr. Hogarth: Did the Canadian Medical Association ever do any research?

Mr. Turner (Ottawa-Carleton): I was not at that particular meeting of the Canadian Bar Association because it was in Halifax. You might have remembered that, Mr. Hogarth, because they set up breathalyzer tests outside the dining room after the dinner and the affect of those breathalyzer tests on the lawyers was quite sobering.

• 1030

There were no scientific tests made by the Canadian Bar Association. They just reviewed the evidence.

Mr. Hogarth: Mr. Turner, it is only questions on the level of impairment that concern

[Interpretation]

dans le sang de plus de 8 p. 1000; l'agent de police a déclaré qu'il avait les yeux vitreux et la bouche pâteuse—ce qui va de soi et confirme le test de la machine. Cet homme ne peut invoquer que son propre témoignage contre celui de l'agent de police.

Or, la machine était peut-être inexacte, elle avait peut-être été mal réglée, l'opérateur était peut-être sans expérience. Or, l'accusé ici ne peut rien invoquer pour conserver sa police d'assurance. Je pense ici à un avocat qui voulait faire admettre une réclamation de \$200,000 contre une compagnie d'assurance. Or, vous ne laissez aucun doute sans subsister, si vous adoptez l'article 224, rien ne subsiste qu'on pourrait invoquer vis-à-vis de la compagnie d'assurance.

M. Turner (Ottawa-Carleton): Je m'engage volontiers à écrire aux procureurs généraux des provinces pour les prier de regarder quel sera l'effet de ces amendements en ce qui concerne les questions de responsabilité civile des polices d'assurance.

M. Hogarth: Vous avez parlé d'épreuves, je pense, monsieur le ministre, d'épreuves contrôlées par le Barreau canadien. Est-ce que le Barreau a fait quelque chose à ce sujet? Je sais qu'il y avait un comité là-dessus. En autant que je sache, on n'a jamais procédé à des épreuves.

M. Turner (Ottawa-Carleton): Il a revu les témoignages que nous avons recueillis et il en est venu à la même conclusion que nous, soit que 8 p. 100 correspondait à un affaiblissement des facultés.

M. Hogarth: Sans doute, mais il n'a jamais fait d'études?

M. Turner (Ottawa-Carleton): Non, il a revu nos témoignages.

M. Hogarth: Est-ce que l'Association médicale du Canada a fait ses propres recherches?

M. Turner (Ottawa-Carleton): Je n'étais pas à cette réunion de l'Association canadienne du Barreau qui se tenait à Halifax où on avait procédé à des essais d'ivressomètre après le banquet. Il s'est révélé que la plupart des avocats étaient assez sobres mais je reconnais avec vous que l'Association canadienne du Barreau s'est contentée de revoir les témoignages.

M. Hogarth: Je parle simplement des questions relatives à ce qu'on appelle «l'amoin-

[Texte]

me, because it has always been my understanding that the people from the crime laboratories in Canada usually testify—although opinions differ—that between .05 and .10 people become impaired more or less according to their resistance to alcohol and their ability to consume it. At .10 the average person is impaired and at .15 all persons are deemed to be impaired by all experts.

Now, Mr. Minister, I would like to read to you from a book by Richard E. Erwin on the Defence of Drunken Driving Cases and he divides impairment into three zones. I am reading from page 242 of the 1966 edition where he says:

(a) Zone I. A person arrested for drunk driving whose blood alcohol level is found to be less than 0.05 per cent will probably be released. If a complaint is filed before the result of the test is known, the case will probably be dismissed.

(b) Zone II. In this zone, between 0.05 and 0.15 per cent blood alcohol, the finding is that some persons may be under the influence of alcohol and some may not. As the blood alcohol content rises nearer to 0.15 per cent a great number of those tested will be found to be under the influence. The prosecution of the defendant whose blood alcohol level falls within this zone will have to depend upon the facts and circumstances of the case and the objective symptoms observed by the arresting officers—the chemical test is inconclusive.

(c) Zone III. ... 0.15 per cent or more—all persons are considered to be under the influence of alcohol.

Mr. Minister, bearing in mind those remarks, I think you will agree that there is a body of authority that supports the contention that he puts forward. Why is it that if we deem everybody at .08 to be impaired you have the two offences? Why do you not just provide by one section that everybody who has a blood alcohol reading of .08 shall be deemed to be guilty of an offence under Section 222?

Mr. Turner (Ottawa-Carleton): There are a number of answers to that that I can think of right off the bat, Mr. Hogarth. There are people who will be impaired even under .08, so there is still the offence of impaired driving, the factual situation of being impaired. There are going to be several communities in Canada that will not have a compulsory breathalizer

[Interprétation]

drissement des facultés,» parce que j'ai pu comprendre que les techniciens des laboratoires au Canada témoignent habituellement, bien que les opinions varient, qu'entre .05 et .10 des gens voient leur capacité de conduire plus ou moins affaiblie selon leur résistance à l'alcool et leur capacité. A .10 la personne moyenne ne peut plus conduire et à .15 toutes les personnes sont considérées comme incapables de conduire par tous les experts.

Monsieur le ministre, j'aimerais citer un livre d'un certain M. Robert E. Herwin sur la Défense des cas de conduite en état d'ivresse et il divise la capacité affaiblie en trois zones. Je lis à la page 242 de l'édition de 1966 où il dit:

(a) Zone I. Une personne arrêtée pour conduite en état d'ivresse dont la teneur en alcool du sang est inférieure à 0.05 pour cent sera vraisemblablement libérée. Si l'accusation est faite avant que le résultat du test soit connu, l'affaire sera probablement classée.

(b) Zone II. Dans cette zone, où la teneur en alcool du sang varie entre 0.05 et 0.15 p. 100, on trouve que certaines personnes peuvent avoir été en état d'ivresse et d'autres pas. A mesure que la teneur en alcool s'approche de 0.15 pour cent, un grand nombre de personnes échantillonnées seront trouvées en état d'ivresse. La mise en accusation du prévenu dont la teneur en alcool du sang tombe dans cette zone dépendra des faits et des circonstances de la cause et des symptômes objectifs observés par les agents de police faisant l'arrestation, le test chimique n'étant pas concluant.

(c) Zone III. ... 0.15 p. 100 ou plus ... Toutes les personnes sont considérées en état d'ivresse.

Monsieur le ministre, en tenant compte de ces remarques, je crois que vous serez d'accord que bon nombre d'antécédents supporte son affirmation. Pourquoi se fait-il que si vous jugez tous les gens à 0.15 comme étant incapables de conduire, vous avez les deux infractions? Pourquoi ne prévoyez-vous pas par un seul article que tous les gens dont la teneur en alcool du sang est de .08 seront jugés coupables d'une infraction aux termes de l'article 222?

M. Turner (Ottawa-Carleton): Sur le champ, je pourrais vous donner plusieurs réponses à cette question, monsieur Hogarth. Il y a des gens dont la capacité sera affaiblie même en bas de .08, de sorte qu'il y a encore une infraction de conduite en état d'ivresse, le fait d'avoir conduit lorsque la capacité était affaiblie. Dans plusieurs localités, le test à

[Text]

er. There is going to be a situation where a person might be under the influence of drugs and the breathalyzer test will be inadequate, so the impairment provision has to obtain there as well.

Mr. Hogarth: Excuse me, Mr. Minister. You missed my point. I am not precluding prosecutions for all these other cases, but why not just provide that anybody who is found to be driving with a blood alcohol level of .08 is deemed to be guilty of the offence of impaired driving? Now, all these other cases might be so.

Mr. Turner (Ottawa-Carleton): That is Mr. Murphy's point, because then you admit that the penalties ought to be the same which is the position we are taking at the moment, but we want to look over Mr. Murphy's brief.

Mr. Hogarth: My concern, Mr. Minister, is that you are being inconsistent if everybody at .08 is impaired.

An hon. Member: Everybody is not.

Mr. Hogarth: No.

Mr. Turner (Ottawa-Carleton): No; we are saying—and I am going to restate this—that it is virtually universal impairment at .08 per cent on medical evidence, but that there are people who are impaired at .05 or .04 and therefore the offence of impaired driving has to remain because it is the factual situation of impaired driving as well as the statutory content. They are two separate offences.

Mr. Hogarth: But Mr. Minister, you have missed my point entirely. The point is simply this: You have an impaired driving section.

Mr. Turner (Ottawa-Carleton): Right.

Mr. Hogarth: Then you have a subsection which says that any person who drives with a blood alcohol level of .08 or greater shall be deemed to be impaired. It does not preclude anybody else from being impaired with less blood alcohol level than that. The point is that anybody with .08 is deemed to be impaired, and forget about adding this second offence. If you are going to conclude that everybody at .08 is impaired, the very fact that you have split these two sections acknowledges that there is a margin within that section that would lead me to believe that people at .08 are not impaired.

• 1035

Mr. Turner (Ottawa-Carleton): Well, I am not so sure that would be the consensus of the Committee.

[Interpretation]

l'ivressomètre ne sera pas obligatoire. Il y aura la situation où une personne est sous l'influence de drogues et le test à l'ivressomètre ne sera pas suffisant, de sorte que la disposition visant la capacité affaiblie doit aussi prévaloir dans ce cas.

M. Hogarth: Excusez-moi, monsieur le ministre. Vous ne m'avez pas compris. Je n'écarte pas les poursuites dans tous ces autres cas, mais pourquoi ne pas simplement prévoir que quiconque est pris à conduire alors que la teneur en alcool de son sang est de .08 est jugé coupable de conduite alors que la capacité est affaiblie? Et ceci pourrait s'appliquer à toutes ces autres causes.

M. Turner (Ottawa-Carleton): Il s'agit là du point soulevé par M. Murphy, parce que vous admettez alors que les peines devraient être les mêmes et c'est la position que nous prenons en ce moment, mais nous voulons examiner le mémoire de M. Murphy.

M. Hogarth: Ce qui me préoccupe, monsieur le ministre, c'est que vous êtes illogique si tout le monde à .08 a sa capacité affaiblie.

Un député: Tout le monde ne l'est pas.

M. Hogarth: Non.

M. Turner (Ottawa-Carleton): Non, nous disons, et je vais le répéter, que la capacité affaiblie à .08 p. 100 est presque universelle, mais qu'il y a des gens qui perdent leur capacité à .05 ou .04 et qu'alors l'infraction de conduite en état d'ivresse existe parce que c'est un fait de conduite alors que la capacité est affaiblie en fait et selon la loi. Il s'agit de deux infractions distinctes.

M. Hogarth: Mais, vous n'avez pas compris du tout, monsieur le ministre, ce que je voulais dire.

M. Turner (Ottawa-Carleton): Exactement!

M. Hogarth: Vous avez un paragraphe relatif à cette question qui dit: Quiconque conduit alors que la proportion d'alcool dans son sang dépasse .08 ou plus sera jugé en état d'ivresse. Ceci n'écarte pas les autres d'être en état d'ivresse à un niveau moins élevé. Nous disons tout simplement que la plupart des gens à .08 sont jugés en état d'ivresse; le simple fait que vous avez divisé cet article en deux reconnaît le fait qu'il existe une marge au sein de cet article qui me porte à croire que les gens à .08 ont encore leur capacité non affaiblie.

M. Turner (Ottawa-Carleton): Je ne suis pas du tout sûr que ce soit là l'avis du comité.

[Texte]

Mr. Murphy: I am not so sure it would either, Mr. Chairman.

The Chairman: Mr. MacEwan?

Mr. MacEwan: I just want to ask the Minister...

Mr. Turner (Ottawa-Carleton): I am sorry, Mr. MacEwan. I just want to go back over this .08 because I think we ought to drive this home. I want to review again the Grand Rapids Study which I reviewed with the Committee. We deem it to be the most thorough field survey ever undertaken, involving 8,000 drivers over a period of a year, demonstrating the effects of drinking on driving. The most important conclusions of this survey so far as the blood alcohol levels were concerned were these, and I want to repeat them to the Committee.

Mr. Chappell: Who conducted that, please?

Mr. Turner (Ottawa-Carleton): This was conducted by the Department of Police Administration at Indiana University by R.F. Borkenstein, R.F. Crowther, R.P. Shumate, W. B. Ziel, R. Zylman and edited by Allen Dale. This investigation was supported by a grant from the Licensed Beverage Industries, Inc., and research grant AC-16 from the Division of Accident Prevention, Bureau of State Services, Public Health Service, State of Indiana.

An hon. Member: What year?

Mr. Turner (Ottawa-Carleton): 1962-63.

Mr. McQuaid: Are those available, Mr. Chairman? It might be helpful if the Committee had those reports.

Mr. Hogarth: Do we have copies of those Mr. Chairman?

Mr. Turner (Ottawa-Carleton): I only have one copy here. We will try to obtain some more copies.

Mr. McQuaid: It would be helpful, I think.

Mr. Turner (Ottawa-Carleton): Yes. That study came to the conclusion that:

Blood alcohol levels over .04 per cent are definitely associated with an increased accident involvement. The probability of accident involvement increases rapidly at alcohol levels over .08 per cent, and becomes extremely high at levels above .15 per cent. When drivers with blood alcohol levels over .08 per cent...

[Interprétation]

M. Murphy: Je ne suis pas du tout sûr en effet, monsieur le président.

Le président: Monsieur MacEwan?

M. MacEwan: Je veux simplement demander au ministre...

M. Turner (Ottawa-Carleton): Mes excuses, monsieur MacEwan, je veux simplement revenir sur ce .08 et je pense qu'il nous faudrait le faire bien comprendre. Je veux une fois de plus revenir sur l'Étude de Grand Rapids que j'ai déjà revu avec le Comité. A notre avis, cette étude est le relevé le plus complet jamais fait, comportant 8,000 des conducteurs pour une période d'un an, nous démontrant les effets de la boisson lorsqu'on conduit un véhicule moteur. La conclusion la plus ferme à l'égard des niveaux de la teneur en alcool nous donne les conclusions suivantes:

M. Chappell: Qui l'a fait, s'il vous plaît?

M. Turner (Ottawa-Carleton): Étude faite par le service de l'Administration policière à l'Université de l'Indiana par R. F. Borkenstein, R. F. Crowther, R. P. Shumate, W. B. Ziel, R. Zylman et éditée par Allan Dale. Cette enquête a été appuyée par une subvention de *Licensed Beverage Industries, Inc.*, et une subvention de recherche AC 16 de la Division de la prévention des accidents, service du bien publique de l'état de l'Indiana. Étude faite en 1962-1963.

Une voix: En quelle année?

M. Turner (Ottawa-Carleton): 1962-1963.

M. McQuaid: Monsieur le président, cette étude est-elle disponible? Il serait peut-être utile de communiquer ce rapport au Comité.

M. Hogarth: Avons-nous des exemplaires, monsieur le président?

M. Turner (Ottawa-Carleton): Nous n'avons qu'une copie ici, nous essaierons d'en avoir d'autres.

M. McQuaid: Ça serait sans doute utile.

M. Turner (Ottawa-Carleton): Oui. Cette étude dit qu'on en est arrivé à la conclusion que:

les niveaux au-dessus de .04 sont rattachés à l'augmentation de la participation à un accident. La probabilité de participation à un accident augmente rapidement aux degrés de teneur en alcool de plus de .08 p. 100, et devient très élevée à des niveaux de .15 p. 100. Lorsque les conducteurs avec une teneur en alcool de plus de .08 p. 100...

[Text]

which is the statutory level we are talking about...

...have accidents, they ...more severe (in terms of injury and damage) ... and more expensive...

in terms of the liability incurred...

...than similar sober drivers. The relative probability of causing an accident...

At the .06 per cent level the probability is 100 per cent higher than at .0 per cent. At .08 per cent the probability is 65 per cent greater than at .06 per cent. At .1 per cent the probability is 100 per cent greater than at .08 per cent. The probabilities increase very severely. Drivers in the higher alcohol level classes tend to become involved more frequently in the more severe accidents. Less than 5 per cent of sober drivers—.0 per cent—are involved in fatal and serious personal injury accidents. Almost 10 per cent of the drivers in the .08 per cent class—the one we are talking about—were involved in the severest class of accidents. Thus an accident-involved driver in the .08 per cent and higher alcohol level classes is almost twice as frequently involved in a fatal or serious accident as the driver in the .0 per cent alcohol level class.

I have a recent study here based on research supported by a National Safety Council Grant conducted in the Safety and Driver Education Laboratory, University of Illinois, Champaign, Illinois, conducted with the co-operation of the University of Illinois Highway Traffic Safety Center which was given to us by the Canadian Highway Safety Council. The main conclusion which may be drawn from this study was presented at the National Safety Congress of the United States last year on October 30, 1968.

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The main conclusion which may be drawn on the basis of the material presented is that alcohol at the 0.05 per cent to 0.07 per cent (50-70 mg percentage) range does impair driving performance. Vision was impaired in that lateral eye movements and fixation frequencies were decreased as were depth perception and peripheral vision ability. Response times, however, were increased. These may be held partially responsible for the significant changes in driving ability. Collectively these results indicate that drivers with blood alcohol in the 0.05 per cent-

[Interpretation]

qui est le niveau statutaire dans le cas que nous avons maintenant. . .

... sont impliqués dans des accidents qui sont plus graves pour ce qui est du dommage et des blessures... et sont plus coûteux..

pour ce qui est des responsabilités...

... que ce qu'il en est pour les conducteurs sobres. La probabilité relative de causer un accident...

A .06, les possibilités sont 100 p. 100 plus élevées qu'à .00 p. 100. Au niveau de .01, les possibilités sont 100 p. 100 plus élevées qu'à .08 p. 100. Et la possibilité augmente d'une façon marquée. Les conducteurs au niveau plus élevé de teneur en alcool participent plus fréquemment à des accidents plus graves et moins de 5 p. 100 des conducteurs sobres (0 p. 100) sont en cause dans des accidents graves. Environ 10 p. 100 des conducteurs au niveau de .08 p. 100, celui dont nous parlons, sont en cause dans des accidents graves. Un accident fatal ou grave mettant en cause un conducteur au niveau de .08 p. 100 et à un niveau de teneur en alcool plus élevé, survient à peu près deux fois plus souvent que pour le conducteur au niveau de .00 de teneur en alcool.

J'ai ici une autre étude faite récemment fondée sur la recherche et appuyée par une subvention du Conseil sur la sécurité routière par le Laboratoire de l'Université de l'Illinois, Champaign, Illinois, en collaboration avec le centre sur la circulation de l'Université de l'Illinois, qui nous fut donné par le Conseil de sécurité routière du Canada. La principale conclusion que l'on y ait tiré a été présentée au Congrès national de sécurité routière des États-Unis soit le 30 octobre, 1968.

La principale conclusion que l'on puisse tirer à la suite des données qui nous furent présentées, c'est que l'alcool au niveau 0.05 pour cent à 0.07 pour cent pour les 50 à 70 milligrammes entraînent une capacité affaiblie. La vision était affaiblie dans le mouvement latéral et les fréquences de fixations sont amoindries pour ce qui est de la perception et de la possibilité de vision périphérique.

Les temps de réaction, cependant, se sont accrus. On peut leur imputer, en partie, certains changements prononcés de la capacité de conduire. Pris collecti-

[Texte]

0.07 per cent (50-70 mg percentage) range...

and we are talking about the 80 milligram percentage range...

...are more hazardous than at the 0.00 per cent level and also question the generosity of present-day legal blood alcohol levels for drivers.

In other words, they are suggesting that the level ought to be reduced to .05 per cent, which is what the Canadian Medical Association has suggested. We make it .08 per cent.

Mr. Hogarth: Is there anything in the studies that you have mentioned where they come out and say—and never mind the averages that all persons with a .08 blood alcohol by alcohol? Were there any studies directed by alcohol? There any studies directed specifically with that objective?

Mr. Turner (Ottawa-Carleton): Nobody will ever come out and say that Mr. Hogarth. Nobody will come out and say, "Every human being is impaired at .08 per cent" but in the Dr. Ward Smith study, Point Zero Eight, the film I was telling you about, .04 per cent and .08 per cent, changes were observed in the driving ability of every one of those racing drivers that took part in the study. Every one was affected so that the alcohol and an effect on every one.

That does not say that everyone in the world at .08 per cent is impaired within the definition of "impaired driving" that we are talking about, but it does say that everyone has his driving ability affected between .04 and .08 per cent.

The Chairman: Mr. MacEwan.

Mr. MacEwan: On the matter of qualified technicians, and that is dealt with on page 41, that is anyone designated by the Attorney General. Can the Minister say who will act as these qualified technicians? Could this be any police officer?

Mr. Turner (Ottawa-Carleton): The police officers attend a special course in the use of the breathalyzer equipment, Mr. MacEwan, and the attorney general of the province will designate who are the persons qualified.

Mr. MacEwan: Who will run these courses?

[Interprétation]

vement, ces résultats indiquent que les conducteurs dont le sang a une teneur en alcool de 0.05 p. 100 à 0.07 p. 100 (50-70mg)...

et nous parlons du pourcentage de 80 milligrammes...

... sont plus dangereux que ceux dont la teneur est de 0.00 p. 100, ce qui met en doute la largesse de la loi en ce qui concerne les teneurs du sang en alcool.

Autrement dit, on propose de réduire le pourcentage à .05 p. 100, chiffre proposé par l'Association médicale canadienne. Nous le réduisons à .08 p. 100.

M. Hogarth: Est-ce qu'il n'y a rien dans les études dont vous avez parlé—peu importe les moyennes—où on dise précisément que toutes les personnes dont la teneur en alcool dans le sang est de .08, sont aptes à conduire tout en étant sous l'influence de l'alcool? Est-ce que certaines études ont été faites précisément sur ce point?

M. Turner (Ottawa-Carleton): Personne ne viendra dire cela monsieur Hogarth. Personne ne viendra dire que «les facultés de tout être humain sont affaiblies à 0.8 p. 100», mais en ce qui concerne l'étude effectuée par le Dr Ward Smith, «Point zéro huit» le film dont je vous avais parlé, on avait remarqué, entre 0.04 et 0.08 p. 100, des changements dans la façon de la course ayant pris fort à l'étude. Ils furent tous affectés. Donc, l'alcool avait un effet sur chacun d'entre eux.

L'étude ne dit pas que les facultés de toute personne au monde sont nécessairement affaiblies à 0.08 p. 100 selon ce que nous appelons «conduite affaiblie», mais il est certain qu'entre 0.04 et 0.08 p. 100 la conduite en est affectée.

Le président: Monsieur MacEwan.

M. MacEwan: Au sujet des techniciens qualifiés, dont il est question en page 41, et qui sont désignés par le Procureur général. Le Ministre peut-il nous dire qui peut être nommé technicien qualifié? N'importe quel agent de police peut-il être nommé technicien qualifié?

M. Turner (Ottawa-Carleton): Non. Il s'agit de tout agent de police qui a suivi un cours spécial sur l'utilisation de l'ivressomètre. Monsieur MacEwan, le procureur général désigne qui sont les personnes qualifiées.

M. MacEwan: Qui précisément organise ces cours?

[Text]

Mr. Turner (Ottawa-Carleton): They are run by RCMP technicians, people at the forensic laboratory in Toronto and other parts of...

Mr. MacEwan: Will these be available throughout the country?

Mr. Turner (Ottawa-Carleton): Let us put it this way. They will have to be and any part of the country that is not equipped with the breathalyzer is not going to be able to enforce this part of the law.

Mr. MacEwan: I realize the RCMP come under the Solicitor General but are plans now being made to conduct these schools and to provide qualified technicians to handle this properly?

Mr. Turner (Ottawa-Carleton): They are being conducted now, you know. The Department of the Honourable D. V. Heald, the Attorney General of Saskatchewan, is conducting these courses now. They are being conducted under Mr. Wishart here in Ontario already. There are several provinces in Canada already putting their peace officers through these courses. I do not know whether Nova Scotia is or not.

Mr. McQuaid: Some provinces have the breathalyzer now. Our province, Prince Edward Island, has the breathalyzer.

Mr. Turner (Ottawa-Carleton): That is right. So has Saskatchewan.

Mr. MacEwan: Will these courses be given to municipal police as well as to the RCMP?

Mr. Turner (Ottawa-Carleton): Sure. Anybody who has the responsibility of enforcing the highway law—the law on the roads.

The Chairman: Mr. Deakon.

Mr. Deakon: Thank you, Mr. Chairman. I have been listening to the Minister speaking about these various tests performed. I notice nothing being said about other conditions of the individuals having these tests performed on them, that is fatigue, lack of sleep or even

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certain kinds of employment. I submit these may cause a person to be impaired and that the alcohol may have a different effect on him, than if he had had proper rest, etc. Have they taken account of a person's condition prior to taking these tests?

Mr. Turner (Ottawa-Carleton): Let us put it this way. The test embraced 8,000 sober driv-

[Interpretation]

M. Turner (Ottawa-Carleton): Les techniciens de la Gendarmerie royale, l'Institut de médecine légale à Toronto, etc.

M. MacEwan: Ces cours sont-ils disponibles partout au Canada?

M. Turner (Ottawa-Carleton): Sans doute. Il faudra bien, et toute région qui ne dispose pas de cet équipement ne pourra pas appliquer cette partie de la loi.

M. MacEwan: Je m'en rends compte évidemment, je sais que la Gendarmerie royale relève du solliciteur général, mais songe-t-on à organiser des cours pour former des techniciens?

M. Turner (Ottawa-Carleton): Ces cours existent déjà. L'honorable D. V. Heald, le procureur général de la Saskatchewan, dirige présentement ce cours. En Ontario, ces cours sont déjà dirigés par M. Wishart. Un certain nombre de provinces au Canada sont en train de faire suivre des cours de ce genre à leurs agents de police. Je ne peux dire si la Nouvelle-Écosse est du nombre de ces provinces.

M. McQuaid: Certaines provinces ont déjà l'ivressomètre. Notre province, l'Île du Prince-Édouard, l'a aussi.

M. Turner (Ottawa-Carleton): Oui, ainsi que la Saskatchewan.

M. MacEwan: Ces cours sont-ils donnés aux agents de la Gendarmerie royale aussi bien qu'aux agents de police municipale?

M. Turner (Ottawa-Carleton): Sûrement. Toute personne qui est chargée d'appliquer les règlements de la circulation.

Le président: Monsieur Deakon.

M. Deakon: Merci, monsieur le président. J'ai écouté le ministre parler de ces divers tests. Je remarque que rien d'autre n'a été dit à propos de l'état de la personne qui a fait l'objet de ces tests, c'est-à-dire la fatigue, le manque de sommeil, ou certains genres de

travaux qui auraient pu le rendre plus ou moins inapte à conduire. Je crois que ces conditions peuvent déjà rendre une personne inapte à conduire et que l'alcool peut avoir sur lui un effet différent de celui qu'il aurait eu s'il s'était bien reposé. Ont-ils tenu compte de l'état de la personne avant de lui faire passer le test de l'ivressomètre.

M. Turner (Ottawa-Carleton): Le test englobait 8,000 chauffeurs à l'état sobre et 8,000

[Texte]

ers and 8,000 drivers under the influence of alcohol—16,000 drivers. They are normal, ordinary people. Some were, I suppose, in various states of fatigue or health. It is a fairly large sample. There is no doubt about it that if a man is fatigued, impairment will come earlier. The present law contemplates that. If a man is fatigued and more susceptible to alcohol consumption, he has a duty, surely, towards his fellow citizens not to put his fellow citizens in jeopardy by getting behind the wheel of an automobile.

Mr. Deakon: What about a person who takes an alcoholic mouthwash a certain period of time prior to this test being performed? What you are doing now under the ability impaired sections...the breathalyzer test is only corroboration to other evidence which is being adduced in court. Now you are actually placing this machine evidence as the sole evidence and only evidence to convict a person.

Mr. Turner (Ottawa-Carleton): I am advised that in practice two tests are taken 15 to 20 minutes apart so that any vapour from mouth alcohol as opposed to blood alcohol can be segregated for that reason.

Mr. Deakon: One other point, Mr. Chairman, if I may. The other thing that bothers me very much is the fact that these people who are being picked up and having these breathalyzer tests performed on them may refuse and they will be found guilty if they do refuse, according to this new amendment.

Getting into a civil liability issue, their insurance premiums are definitely going to jump because these companies are going to say, "Well, these guys are risks" and as we know insurance companies are reluctant to take any further risks than they have to, and this is going to cause hardship on many, many people which otherwise would not take place.

Mr. Turner (Ottawa-Carleton): These guys are risks.

Mr. Deakon: Not necessarily. They may be and they may not be.

Mr. Turner (Ottawa-Carleton): Because of civil liability, of course, I have undertaken to write to the attorneys general to draw their attention to the effect of these amendments if carried by the Committee and by the House. But the guy who drinks and drives is a risk.

[Interprétation]

chauffeurs ayant pris de l'alcool, en tout, 16,000 chauffeurs, des gens simples, normaux. Certains étaient, je suppose, plus ou moins fatigués ou en bonne santé, bref, l'échantillonnage était assez général. Nul doute, si un homme est fatigué, l'inaptitude à conduire se ressentira plus tôt, et la loi actuelle en tient compte. Si la personne est fatiguée ou si elle ne supporte pas l'alcool, elle se doit de ne pas mettre en danger la vie de ses concitoyens en prenant le volant d'une automobile.

M. Deakon: Mais, qu'advient-il de la personne qui se rince la bouche avec une préparation à base d'alcool? Comment interprétez-vous les articles concernant l'affaiblissement des facultés. En fait, le test de l'ivresomètre ne fait que corroborer les preuves produites en cour. A vrai dire, le résultat que donne l'ivresomètre sur le test constitue la seule et unique preuve pour condamner une personne.

M. Turner (Ottawa-Carleton): Il paraît qu'en pratique on effectue deux tests à 15 ou 20 minutes d'intervalle pour différencier entre la teneur d'alcool dans l'haleine par rapport à la teneur d'alcool dans le sang.

M. Deakon: Un autre point, monsieur le président. Une autre question qui me préoccupe sérieusement est le fait que les gens qui sont arrêtés et qui sont soumis aux tests de l'ivresomètre peuvent évidemment refuser, mais d'après ce nouvel amendement, ils seront jugés coupables, au cas où ils refuseraient de s'y soumettre.

En ce qui concerne la responsabilité envers autrui, ces gens verront certainement leurs primes d'assurances majorées, du fait que les compagnies d'assurances ne voudront pas prendre plus de risques qu'ils ne peuvent se permettre, ce qui causera des problèmes à bien des gens.

M. Turner (Ottawa Carleton): Ces types-là constituent des risques.

M. Deakon: Pas nécessairement.

M. Turner (Ottawa-Carleton): Évidemment, à cause de la responsabilité envers autrui. Je me suis engagé à écrire aux Procureurs généraux à ce sujet pour attirer leur attention sur l'effet que produiraient ces amendements s'ils étaient adoptés par le Comité et par la Chambre. Mais le type qui boit et qui conduit constitue un risque.

[Text]

Mr. Deakon: I agree with you, Mr. Minister, but the point is, what I am confronted with here in my mind, is that you are having the person designated as being a risk on the road and that that issue is being determined by one individual, a police officer, to whom you may talk back or just say something that he may not like. He may not like your appearance. He may figure that he has a big fish right here, for example, and you are in trouble, whereas ordinarily it would not occur.

Mr. Turner (Ottawa-Carleton): Underlying that question of yours, Mr. Deakon, is a latent suspicion of how the police are going to enforce this provision. I said before that we can only go on an assumption, which from time to time is not borne out, that the Criminal Code is enforced by police officers and peace officers doing their reasonable best to enforce the law in a human and humane way. That is an assumption upon which our whole Criminal Code is based.

Mr. Deakon: True. The assumption is, too, in law, that a person is innocent until he is proven guilty.

Mr. Turner (Ottawa-Carleton): Yes.

Mr. Deakon: But in practice and according to these amendments if they go through, it may not be the case because you are guilty until you have proven yourself innocent. It is to be the exact reverse.

From my experience, the police officer gets on the stand and the majority, you might say, are good. I have nothing against the majority but you may have one rotten apple amongst them and you are convicting a person who may be innocent because of one rotten apple. Our judicial system is based upon letting as many criminals go as long as you do not convict an innocent man but here you may convict an innocent man.

Mr. Turner (Ottawa-Carleton): The man can refuse the test if he can show the court that the policeman did not have reasonable and probable grounds for asking him to take the test or if he has a justifiable excuse for refusing to take it. If he refuses to take it the only means of enforcement we have for making a compulsory test practical at all is to make it an offence to refuse to take it and he can take the test.

The Chairman: Mr. McQuaid?

Mr. McQuaid: The public will begin to think that we are all impaired here if we do not get cracking on this. I think we have had a very good discussion on it. I think most of

[Interpretation]

M. Deakon: Je suis entièrement de votre avis, monsieur le ministre, mais ce qui me préoccupe ici c'est ceci: la question de déterminer la culpabilité est laissée à la discrétion d'un agent de police auquel on peut répondre ou dire quelque chose qui lui déplairait. Il pourrait se croire être une grosse légume et vous vous trouverez soudainement dans le pétrin, ce qui d'ordinaire n'aurait pas eu lieu.

M. Turner (Ottawa-Carleton): Par votre question, je crois comprendre, monsieur Deakon, que vous ne savez pas comment la police va s'y prendre pour appliquer cette disposition de la loi. J'ai déjà dit que nous ne pouvons que supposer que le Code criminel est imposé par des agents de police et des gardiens de la paix qui agissent au mieux de leur pouvoir pour faire respecter la loi de façon humaine et raisonnable. Tout notre Code criminel se fonde sur cette hypothèse.

M. Deakon: Sans doute. La loi dit aussi qu'une personne est innocente jusqu'à preuve du contraire.

M. Turner (Ottawa-Carleton): Oui.

M. Deakon: Mais dans la pratique et jusqu'à ce que ces amendements soient adoptés, ce ne pourrait peut-être pas être le cas parce que vous êtes coupable jusqu'à ce que vous ayez prouvé votre innocence. C'est exactement l'opposé.

D'après ce que je vois, l'agent de police se présente à la barre et l'on peut dire que la plupart sont de bons éléments. Je n'ai absolument rien à dire contre les agents en général, mais il suffit d'un mauvais élément pour faire condamner une innocente personne. Notre système judiciaire va jusqu'à laisser bien des criminels en liberté plutôt que de condamner un innocent, mais ici c'est exactement l'inverse qui se produit.

M. Turner (Ottawa-Carleton): La personne peut refuser le test si elle peut prouver à la cour que le policier n'avait pas de raisons de lui demander de subir le test ou qu'elle avait une excuse pour le refuser. Si elle refuse de se soumettre au test, la seule manière que nous ayons de rendre le test obligatoire c'est de faire un délit du refus de s'y soumettre.

Le président: M. McQuaid?

M. McQuaid: Le public va penser que nous sommes tous inaptes à conduire si nous ne faisons pas quelque chose. Nous avons eu un grand débat là-dessus. La plupart d'entre

[Texte]

the members of the Committee are satisfied that the law as stated by this section is reasonable. I suggest that we now move on to another section.

The Chairman: I would be very pleased to take this suggestion, Mr. McQuaid.

Mr. Peters: Mr. Chairman, before you do that I would like to ask some questions. I agree with Mr. Deakon, because I do not have the respect for some of the police that certain of you people seem to have. I have been on the wrong side of them too many times to be aware of their virtues, I am sometimes more aware of their faults.

Is this the only test that is going to count from now on? I could ask a doctor to give me a test, which is a great deal more accurate. Anybody who believes that a breathalyzer test is accurate is wrong. However, a blood test by needle is very accurate and previously you could always ask for this.

Mr. Turner (Ottawa-Carleton): You can still ask for it.

Mr. Deakon: With a .08 reading you have had it.

Mr. Turner (Ottawa-Carleton): Even so, you can still ask for it.

Mr. Peters: It seems to me there should be some alternative for the accused in this respect.

Mr. Turner (Ottawa-Carleton): The accused has every alternative.

Mr. Peters: He can ask his doctor rather than this joker who has absolutely no medical ability at all. Frankly, I am more interested in the man who really is innocent, and that is the man who has mixed antibiotics, or a number of drugs in very small amounts, with insulin and other things of that nature and who has a legitimate problem and knows he is going to have a legitimate problem. He knows that if he takes this breathalyzer test that in many cases he is going to be framed. The right for him to make that decision should be written in here. What happens is that the officer does not lay any charges. He will pick the man up and tell him he has to take a breathalyzer test, but in many cases he will not even tell him he has the right to refuse and what the penalty is if he does refuse.

It seems to me they should be obliged to tell the man that he has a legitimate defence. He should have the right to prepare some evidence in his defence, because not one person will get off under this. I agree they are

[Interprétation]

nous sommes convaincus, je pense, du bien-fondé de cet article de la Loi. Peut-être pourrions passer à un autre article.

Le président: Je serais très heureux de suivre votre suggestion, M. McQuaid.

M. Peters: Auparavant, monsieur le président, je voudrais poser quelques questions. Je suis de l'avis de M. Deakon, je n'ai pas le respect des agents de police que certains d'entre vous ont. J'ai été en difficulté avec eux trop souvent. Je ne suis pas tellement persuadé de leurs vertus, je suis plutôt conscient de leurs défauts. Est-ce que c'est le seul et unique test qui va compter désormais? Je pourrais demander à un médecin de me faire subir le test, ce qui serait beaucoup plus précis. Si vous pensez qu'un ivressomètre est exact, vous avez tort. Cependant, une analyse du sang après prélèvement de sang est très exacte et autrefois on pouvait la demander.

M. Turner (Ottawa-Carleton): On peut toujours le demander.

M. Deakon: Avec une indication de .08 vous êtes fait.

M. Turner (Ottawa-Carleton): Même, vous pouvez toujours le demander.

M. Peters: Il me semble qu'on devrait laisser le choix à l'accusé.

M. Turner (Ottawa-Carleton): L'accusé a tous les choix.

M. Peters: Il peut demander à son médecin plutôt qu'à ce plaisantin qui n'a aucune espèce de formation médicale. Ce qui m'intéresse, en ce moment, c'est le cas de l'innocent, par exemple, celui qui a absorbé un mélange d'antibiotiques ou qui a absorbé des médicaments variés en petites quantités, avec de l'insuline ou autre chose du genre. Celui-ci a un problème, il sait pertinemment que s'il se soumet au test de l'ivressomètre, il va avoir des ennuis. Il devrait avoir le droit, ça devrait être écrit ici; de refuser. L'agent de police ne portera aucune accusation. Il se contentera de dire à la personne qu'il lui faut se soumettre au test sans lui indiquer qu'il a le droit de refuser et ce qu'il risque s'il refuse.

On devrait obliger la police à dire au prévenu qu'il a le droit de se défendre. Il devrait avoir le droit de préparer sa défense, parce que plus tard, c'est fini. Je conviens que l'agent de police va dire que la personne titu-

[Text]

going to say, "The man staggered and he could not walk a straight line and his speech was slurred". They say that whether it is true or not. That is of absolutely no importance at all and it really should not have any effect in this legal lingo because it is not a legal fact. It is supposition or an indication of something. I think something should be written in here to protect the person who is going to be involved in a situation like this. This protects the public but individuals should also have some protection. The former protection provided that the man could call a doctor and have a blood test made and perhaps the doctor would be aware or the blood test would show the drugs he had in his system. Is it a legitimate defence? It seems to me it will be the only one left to the man if he honestly has a case.

The Chairman: Mr. Minister?

Mr. Turner (Ottawa-Carleton): Under these sections any accused is entitled to muster any type of alternative evidence he can. He is entitled to take a urine test and to present that as contrary evidence, if he has to. He is entitled to take a blood test. Nothing prevents him from doing that under these sections and if he can establish that the breathalyzer test was not as accurate as the blood or the urine test that he took within the same period of time, then he has every chance of defeating the charge.

The basis of the breathalyzer test is that there is a direct relationship between the state of the breath and the content of alcohol in the arterial blood.

Mr. Peters: Mr. Minister, would you not agree that he has to be allowed to do this? In fact, the officer should indicate that he has the right to do this. It should be part of the regulations surrounding this. Suppose the man had taken a drug, and he was glassy-eyed and through no fault of his own he did not know the drug the doctor had given him and the doctor was not even in the same town. He would have to know his rights and he should be told that he has the right to do this, or it is meaningless. It is the same as the warning, "Anything you say will be taken down in writing and it may be used in evidence against you". When there is an impaired charge, and when that statement is made he should be told this or it is not worth having. It would have to be sort of a mandatory thing that he be told he has this right.

Mr. Turner (Ottawa-Carleton): I tend to agree with Mr. Peters in the sense that I think we are going to have to explore the

[Interpretation]

bait, qu'elle ne pouvait pas marcher droit, qu'elle s'exprimait avec difficulté. Les agents de police le disent toujours que ce soit vrai ou pas. Ce sont des choses qui n'ont aucune espèce d'importance et qui ne devraient avoir aucune valeur juridique. Il s'agit, en général, de pures hypothèses. Il s'agirait de protéger la personne en cause. Je pense qu'il faudrait ajouter une clause pour protéger l'individu. Cette loi protège le public, mais elle ne protège pas l'individu. Autrefois on pouvait convoquer un médecin et faire procéder à une analyse du sang. Il est possible que le médecin sache, ou que l'analyse révèle qu'est-ce qu'on avait comme médicament dans le sang. Il me semble que c'est la seule solution pour défendre honnêtement son cas.

Le président: Monsieur le ministre?

M. Turner (Ottawa-Carleton): Aux termes de cet article toute personne accusée, peut opposer toutes les preuves qu'elle pense avoir. Elle peut demander une analyse d'urine, et présenter le résultat comme preuve. Elle peut faire procéder à l'analyse de son sang. Rien, ici, ne l'empêche de prendre ces mesures contraires. Si elle peut établir que le résultat de l'ivressomètre n'était pas aussi exact que l'analyse du sang ou l'analyse de l'urine, prises en même temps, elle a toutes les chances de gagner sa cause.

Bref, le principe de l'ivressomètre c'est qu'il y a un rapport direct entre l'analyse de l'haleine et le contenu en alcool du sang artériel.

M. Peters: Mais il faudrait tout de même que l'agent de police soit obligé de lui indiquer qu'il a le droit de le faire. Il faudrait que cela fasse partie des règlements. Supposons que la personne ait absorbé un médicament, et qu'elle ignorait que ce médicament avait un certain effet. Il devrait connaître ses droits et on devrait lui dire ce qu'il a à faire ou ça n'a pas de valeur. Ce devrait être la même chose que lorsqu'on avertit l'accusé que «tout ce qu'ils diront pourra être retenu contre eux». Il faudrait obliger, en somme, les autorités à le prévenir du droit qu'il a.

M. Turner (Ottawa-Carleton): Je suis un peu de l'avis de M. Peters. Il va falloir que nous revoyons de fond en comble la *Loi sur la*

[Texte]

whole code in the Canada Evidence Act pretty soon, and I have mentioned this before. I mentioned in the House, Mr. Peters, about an accused being told by the police officers what his rights are. We have done very little about that in Canada and it is a far more general problem right across the board. I am suggesting that it is open to the accused to be properly advised under legal aid—and I hope in most provinces he would be properly advised on a criminal charge—and he can adduce all types of corroborative or contradictory evidence as to his state. It is open to him to do that.

Mr. Hogarth: Regretfully, Mr. Minister, the big problem is that for practical purposes that the evidence is not available to an accused. What happens in the police station is that he is "breathalyzed", booked and put in the cells. He wants to get out on bail but they will not let him get out on bail until they think he has sobered up, if they thought he was drunk in the first place. He has difficulty in getting his doctor there in time to make the blood-alcohol test a test of any practical significance. They will not have the appropriate vial on hand that is needed to preserve the blood in order to keep the alcohol from deteriorating in it. All these factors, with the greatest respect, Mr. Minister, make your suggestions somewhat impractical.

I would not be as concerned with Mr. Peters' point if it were not for the fact that two things are being established here. One, you have concluded that a breathalyzer test gives an accurate reading of the blood content. With respect, there is a built in error in the Berkenstein breathalyzer—and I note that Dr. Berkenstein was one of the people who did the survey—and it appears to me that it presumes that all persons exhale alcohol through the lungs at the same rate. I think that is an accepted built-in defect in the Berkenstein breathalyzer. The Alcometer and the other breathalyzers all have defects in them, and they can vary up to 10 per cent. That is item No 1.

Item No. 2 is that you have provided the same kind of offence, the indictable offence—and this is what concerns me the most—with the same punishment as impaired driving.

Mr. Turner (Ottawa-Carleton): You wanted to incorporate both offences in the same section, did you not, Mr. Hogarth?

Mr. Hogarth: No, I do not think I have ever advocated that. My point is that if this were a lesser offence, a summary conviction offence, it would not matter so much to me whether the person was impaired or not. If

[Interprétation]

preuve au Canada, j'en ai déjà parlé. J'ai parlé à la Chambre, M. Peters, du cas, où l'agent de police prévient l'accusé de ses droits. Nous n'avons pas fait grand-chose au Canada à ce sujet. C'est un problème beaucoup plus général. Je veux dire qu'il appartient à l'accusé de demander l'assistance légale requise et j'espère que dans la plupart des provinces il sera averti des inculpations criminelles. Dans ces conditions, l'accusé pourra fournir toutes sortes de preuves pour corroborer ses dires.

M. Hogarth: Malheureusement, monsieur le ministre, pour des raisons pratiques ce genre de preuve ne peut pas être invoqué par l'accusé. Regardez ce qui se passe dans les postes de police, on lui fait subir le test et on le met en cellule. Il veut en sortir sous caution mais on ne le laissera pas sortir avant qu'on soit convaincu qu'il n'est plus sous l'effet de l'alcool. Il a du mal à faire venir son médecin à temps pour procéder à une analyse du sang. On n'aura pas le matériel qu'il faut pour conserver le sang, pour empêcher l'alcool de se dégrader. En toute déférence, monsieur le ministre, permettez-moi de vous dire que vos idées ne sont pas très très pratiques.

Je ne serais aussi préoccupé du point soulevé par M. Peters, s'il n'y avait deux choses: D'abord vous supposez que l'ivressomètre est précis. Or, l'ivressomètre du Dr Berkenstein n'est pas très précis. On constate que le Dr Berkenstein figurait à la liste des gens qui ont procédé à ces analyses; or il présume que tous les gens exhalent l'alcool au même taux. Il a de plus un défaut propre. L'alcomètre ou autres ivressomètres ont des marges d'erreurs de 10 p. 100. Voilà le premier point. Le numéro deux, c'est que vous avez prévu le même délit, et c'est ce qui me préoccupe le plus, vous avez prévu le même délit criminel avec la même sanction que dans le cas de l'inaptitude à conduire.

M. Turner (Ottawa-Carleton): Vous vouliez pourtant que les deux délits figurent au même article, M. Hogarth?

M. Hogarth: Je ne pense pas l'avoir jamais proposé. Mais, s'il s'agit d'un délit moins grave, punissable sur déclaration sommaire de culpabilité, cela m'importerait peu. Si elle avait une teneur d'alcool dans le sang de .08

[Text]

he had a .08 reading and you could arbitrarily say that we have to get those people off the road and make them guilty of a criminal offence and compel them to take a breathalyzer test, that would suit me fine. The fact is that you have made it the more serious offence, an offence which has always gathered with it moral culpability, when it is not necessarily so with a person with a .08 reading. For these reasons I think that perhaps you should consider an alternative.

• 1100

The Chairman: Mr. Hogarth, I understand that we are going to stand the penalty clauses and we will try to pass on the substantive clauses.

Mr. Hogarth: Unfortunately, Mr. Chairman, it comes in when you say:

... is guilty of an indictable offence or an offence punishable on summary conviction...

That has nothing to do with the penalty itself. It is a type of offence.

Mr. Turner (Ottawa-Carleton): When we talked about penalties we were leaving open the question of indictable and summary.

Mr. Hogarth: I beg your pardon. I thought it was just whether it should be a \$50 or \$100 fine.

The Chairman: If it is agreeable we will hear Mr. Chappell, and then I think we should proceed and pass on some of these sections and either reject or accept them. Mr. Chappell?

Mr. Chappell: Mr. Chairman, I go back to the point I was on about an hour ago, that it is not only the man who appears to be impaired through drugs, taken innocently as prescribed by a doctor, and some alcohol. There are these civil claims which can be affected as well.

We have a man who knows he did not have enough alcohol, and he wants the proof. The Minister has said he can bring this evidence. With respect, he is locked up in the cells for three or four hours perhaps so there is no way he can get his hands on a doctor or on a urine testing bottle.

I cannot see wherein lies the difficulty of spelling out under Section 223 that he be offered the opportunity of an alternative. I do not say he should be given both, as in England, but I think one or the other should be made available to him, if he so wishes.

[Interpretation]

et que vous décidiez de l'empêcher de conduire ce serait parfait. Mais ce n'est pas ce qui se produit ici. Vous parlez d'un délit qui suppose une culpabilité morale. Or, ce n'est pas toujours le cas, même si on a une teneur d'alcool dans le sang de .08. C'est pour cette raison que vous devriez, il me semble, songer à une autre solution possible.

Le président: Nous allons, si je ne m'abuse, réserver les articles relatifs à la sanction pour passer aux articles de fond.

M. Hogarth: Malheureusement, monsieur le président, on en parle lorsqu'on dit:

... est coupable d'un acte criminel ou d'une infraction punissable sur déclaration sommaire de culpabilité...

Ce qui n'a rien d'une sanction. C'est plutôt un genre de délit.

M. Turner (Ottawa-Carleton): Lorsque nous parlions de sanctions nous laissons ouverte la question de ce qui était possible d'une sanction et des déclarations sommaires.

M. Hogarth: Je vous demande pardon. Je me demandais s'il s'agirait seulement d'une amende de \$50 ou de \$100.

Le président: Si vous êtes d'accord nous pourrions donner maintenant la parole à M. Chappell, et passer ensuite à d'autres articles et soit les adopter soit les supprimer. Monsieur Chappell.

M. Chappell: Je reviens à ce que j'ai dit il y a environ une heure, qu'il ne s'agit pas seulement de la personne dont les facultés semblent affaiblies parce qu'elle a absorbé des médicaments prescrits par un médecin ou de l'alcool. Mais je pense à ces actions en dommages-intérêts qui seront touchées également.

Supposons que quelqu'un sache qu'il n'avait pas trop d'alcool dans le sang et qu'il veut le prouver. Le ministre dit qu'il a le droit d'apporter ces preuves. Mais en fait, il est dans une cellule où il passe deux ou trois heures par exemple. Il n'y a pas moyen pour lui de contacter un médecin, ni d'obtenir une bouteille pour procéder à un test d'urine.

Je ne vois pas pourquoi il est si difficile de préciser à l'article 223 qu'on lui laisse une alternative. Je ne dis pas qu'il faudrait lui offrir les deux choix, comme en Angleterre, mais je pense qu'il faudrait lui offrir l'un ou l'autre.

[Texte]

It might have a sobering effect on the testers, as well, if they knew another sample had been given which could be brought in to compare with their breathalyzer test.

Mr. Valade: On page 37 does not 224A provide for a sample also being given to the accused?

Mr. Turner (Ottawa-Carleton): Yes.

Mr. Valade: That would take care of...

Mr. Turner (Ottawa-Carleton): That is a blood sample, mind you.

Mr. Valade: A blood sample corresponding to the sample taken.

Mr. Turner (Ottawa-Carleton): Yes; the accused is entitled to that.

Mr. Murphy: Mr. Chairman, we seem to be moving on to...

The Chairman: I am trying to resolve something in my own mind here. We are actually on 223. I have allowed some latitude because they are all interwoven, but if we are going to make any progress we will have to restrict ourselves to the sections as much as possible. Mr. Gilbert is waiting patiently.

Mr. Gilbert: In 223 I note the words

where a peace officer on reasonable and probable grounds believes that a person is committing, or at any time within the preceding two hours has committed ..

What criteria would the police use, relative to reasonable or probable grounds, for that two-hour period within which an offence may have been committed? On the next page it states:

...he may, by demand made to that person forthwith or as soon as practicable, require him to provide then or as soon thereafter as is practicable a sample of his breath...

There are two tests there. What do the Minister and his officials think about this question of practicability.

Mr. Turner (Ottawa-Carleton): The test is to be required immediately—forthwith—or as soon afterwards as they can get him to the police station to take the test. After two hours we do not believe you can get an accurate reading. That is why the two hours is in there.

[Interprétation]

Les analystes seraient également plus prudents s'ils savaient que l'on aura le droit stricte de demander un autre test afin de comparer aux résultats de l'ivressomètre.

M. Valade: A la page 37, est-ce que l'article 224 a) ne prévoit pas que l'on donne toujours un échantillon à l'accusé?

M. Turner (Ottawa-Carleton): Oui.

M. Valade: Ce qui fait que...

M. Turner (Ottawa-Carleton): Un échantillon de sang.

M. Valade: Un échantillon de sang correspondant à l'échantillon prélevé.

M. Turner (Ottawa-Carleton): Oui, l'accusé a droit à cela.

M. Murphy: Monsieur le président, il me semble que nous passons...

Le président: J'essaie de résoudre un problème dans mon esprit. Nous en étions à l'article 223. Je vous ai permis quelques libertés, mais si nous voulons avancer, nous devons, je pense, nous tenir dans la mesure du possible aux articles en question. Monsieur Gilbert est très patient.

M. Gilbert: A l'article 223, je constate les mots:

Lorsqu'un agent de la paix croit, en s'appuyant sur des motifs raisonnables et probables, qu'une personne est en train de commettre, ou a commis à quelque moment au cours des deux heures précédentes...

sur quels critères est-ce que le gendarme se fondera pour établir les motifs raisonnables et probables, dans la période de deux heures, où les infractions sont commises?

A la page suivante, on dit:

...il peut, par sommation faite à cette personne sur-le-champ ou aussitôt que c'est matériellement possible exiger que cette personne fournisse alors ou aussitôt que c'est matériellement possible par la suite, un échantillon de son haleine...

Vous avez là deux analyses. Je me demande ce que le ministre et ses fonctionnaires pensent de cette question de possibilité matérielle?

M. Turner (Ottawa-Carleton): Il faut faire l'analyse sur-le-champ ou aussitôt qu'ils pourront conduire l'inculpé au poste de police. Nous ne croyons pas qu'après deux heures l'analyse serait exacte. C'est pourquoi nous précisons ce délai.

[Text]

Why you have the phrase "preceding two hours", of course, is to enable the test to be required, for example, where there has been a hit-and-run accident and the driver is apprehended either at home or somewhere else within the two-hour period and found to have been, or gives reasonable probable cause for a police officer to believe that he has been, involved. Within that two-hour period, if they can establish the two hours, that test can be required. That is the reason for the two hours, Mr. Gilbert.

Mr. Gilbert: It is rather difficult from an objective standpoint.

Mr. Turner (Ottawa-Carleton): Yes.

Mr. Murphy: The two hours concerns me a bit. If it is a hit-and-run case, as you suggest, sir, they have him on the hit-and-run. They do not have to have him under your proposed section 224.

Mr. Turner (Ottawa-Carleton): Yes; but we still want to get him for impaired driving, or for driving with a statutory blood alcohol content.

Mr. Murphy: What I am rather concerned about, sir, is that we are opening this up to this nasty police officer to whom Mr. Deakon keeps referring. You have that two hour period. The man goes home and has a couple of drinks there and the police officer comes along and automatically, because he smells...

Mr. Turner (Ottawa-Carleton): There is no doubt about it that if the accused...

Mr. Murphy: You are forcing him into the witness box.

Mr. Turner (Ottawa-Carleton): No; if the accused can establish that after he got home, or after he finished driving, he consumed alcohol, that would rebut the inference that he had the required alcohol blood level content at the time he was driving. There is no doubt about that.

Mr. Murphy: Mr. Chairman, that is just the point. You say, "If the accused can establish". You are forcing the accused into the position of establishing this—of going into the witness box—within a two hour period. I do not mind at all if he is caught at the spot and he has to defend himself. That is fine. He put himself in that position. But simply because he went home and may have had some drinks there, or in his hotel room, or whatever the case might be, and a police officer has the idea that he might have been involved in an acci-

[Interpretation]

Nous parlons des «deux heures qui précèdent», c'est pour obliger qu'on fasse un test, par exemple, s'il y a eu un accident, avec délit de fuite et qu'on arrête le conducteur dans les deux heures qui suivent, chez lui ou ailleurs, et qu'on constate ou qu'il semble y avoir de bonnes raisons pour l'agent de police de croire qu'il est coupable. Si l'on peut établir qu'il s'est écoulé moins de deux heures depuis l'accident, on peut exiger le test. Voilà la raison pour laquelle on parle de deux heures, monsieur Gilbert.

M. Gilbert: Cela paraît assez difficile, d'un point de vue objectif.

M. Turner (Ottawa-Carleton): Oui.

M. Murphy: Cette question de deux heures m'inquiète un peu. Si c'est un cas de délit de fuite, par exemple, on peut l'inculper pour ce délit. Il n'y a pas besoin de recourir à l'article 224.

M. Turner (Ottawa-Carleton): Oui, mais nous voudrions également le faire condamner pour conduite alors que ses facultés sont affaiblies, ou que son sang révèle une certaine teneur d'alcool.

M. Murphy: Ce qui m'inquiète, c'est qu'on demande au méchant agent de police dont parle M. Deakon de porter un jugement. Avec cette période de deux heures, il peut arriver que la personne entre chez-elle, prenne un ou deux verres d'alcool et que l'agent de police arrive et l'arrête automatiquement parce qu'il sent l'alcool.

M. Turner (Ottawa-Carleton): Il ne fait pas de doute que si l'accusé...

M. Murphy: Vous l'obligez à témoigner contre lui-même.

M. Turner (Ottawa-Carleton): Si l'accusé peut prouver qu'il a consommé de l'alcool une fois rentré chez-lui, ou après avoir laissé le volant, il a absorbé de l'alcool chez lui, ce qui réfuterait l'accusation que la teneur d'alcool de son sang était à ce niveau alors qu'il conduisait. Il n'y a aucun doute à ce sujet.

M. Murphy: Mais précisément, vous dites que «si l'accusé peut prouver», vous obliger l'accusé de faire la preuve, de témoigner en sa faveur dans un délai de deux heures. Peu m'importe si on l'arrête sur-le-champ et qu'il doit se défendre. Il s'est lui-même mis dans cette situation fâcheuse. Mais si simplement parce qu'il est rentré chez lui et qu'il a pu prendre un verre, ou à sa chambre d'hôtel ou ailleurs, et l'agent de police pense qu'il a pu être mêlé à un accident, sent l'odeur de l'alcool sur son haleine et met l'accusé en

[Text]

dent, smells the drink on his breath and makes the request, under the law as it is here he has to comply with that request or he has committed an offence of some kind, the type of which we have yet to determine, hopefully. That two-hour period causes me a little concern.

Mr. Turner (Ottawa-Carleton): You have to assume that if apprehended by a police officer at his hotel room or at his home he would say to the police officer "I am sorry; I was a little nervous after this incident and I just took a couple of drinks here at home." The police officer is going to apprehend him on the hit-and-run anyway.

Mr. Murphy: That is right.

Mr. Turner (Ottawa-Carleton): The police officer has to make his own judgement on whether he should be charged on the other offence.

It is going to be open to him when the hit-and-run case is heard to adduce evidence to show that, although there may have been a hit-and-run situation, he took the drink at home, and he should not be caught under the 224 situation.

I do not really see too much of a problem there. If we do not have the two-hour figure there it means we will not be able to catch the driver unless we do so at the scene of the accident.

The Chairman: Mr. Deakon?

Mr. Deakon: Mr. Chairman, one further point of concern I have about these amendments is that if the purpose of them is to keep drinking drivers off the roads, which I believe it is, you have the words "drives or has care or control". Suppose a person realizes he has had a little too much and goes and parks his car. This man is going to be guilty, too.

The Chairman: Mr. Deakon, we have been through this. Do you have any special question.

Mr. Deakon: No, that is it; thank you.

The Chairman: Mr. Hogarth?

Mr. Hogarth: The two-hour position is coupled with the certificate that comes later, because the certificate presumes that at any time within two hours after the event his blood alcohol reading is the same. That is the strangest legal fiction I have ever heard.

[Interpretation]

demeure de se conformer à la Loi, sans quoi on peut l'accuser d'un délit quelconque dont on n'a pas encore établi la nature. C'est ce délai de deux heures qui m'inquiète.

M. Turner (Ottawa-Carleton): Vous devez supposer que s'il est arrêté par un agent de police dans sa chambre d'hôtel ou chez lui, il devra dire à l'agent de police, «Je regrette, j'étais un petit peu agité après cet incident et j'ai bu un ou deux verres s'ici ou à la maison.» De toute façon, il sera arrêté pour délit de fuite.

M. Murphy: C'est exact.

M. Turner (Ottawa-Carleton): Ce sera à l'agent de police de décider s'il doit l'inculper pour l'autre délit. Lors du procès pour délit de fuite, l'accusé pourra, s'il le désire, faire la preuve que même s'il y a eu délit de fuite, il a bu à la maison et qu'il n'est donc pas coupable aux termes de l'article 224.

Il me semble que ce n'est pas tellement un problème. Si nous n'établissons pas le délai de deux heures, nous ne pourrons pas faire prendre le conducteur en défaut à moins que nous l'arrêtions sur les lieux mêmes de l'accident.

Le président: M. Deakon?

M. Deakon: Il est un autre point qui me préoccupe en ce qui concerne ces amendements. Si l'on veut empêcher les gens de conduire en état d'ébriété, ce qui est évidemment l'intention de la loi, on parle de «quelconque conduit ou a la garde ou le contrôle». Supposons que quelqu'un constate qu'il a un peu trop bu et stationne sa voiture. Il est coupable aussi.

Le président: Nous avons déjà examiné cette question, M. Deakon. Avez-vous des questions particulières à poser là-dessus?

M. Deakon: Non. C'est tout. Merci.

Le président: Monsieur Hogarth.

M. Hogarth: Le délai de deux heures est accompagné d'un certificat délivré ultérieurement, car le certificat prend pour acquis que dans les deux heures après l'accident, la teneur d'alcool dans le sang est la même. Ce qui me paraît assez bizarre du point de vue juridique.

[Text]

For example, if, at twelve o'clock midnight, a man was in his car and had a blood alcohol reading of .08 by, say, a quarter to two the normal lapse rate would bring that down to

• 1110

somewhere around .065. What happens is that if this demand and the test are made within two hours, then you couple that with the certificate referred to on page 38, and it is deemed to be .065 at the time that the offence is alleged to have been committed. That gives that accused a break. They could not charge him.

Mr. Turner (Ottawa-Carleton): That is right.

Mr. Hogarth: Unless, of course, you get back to the original defect in this section, which is that the officer had reasonable and probable grounds to believe that he was impaired in the first place. He can go ahead on that evidence; but he would not use the certificate.

The accused who is hit the hardest, because of the way it works the other way, it being a two-edged sword, is the accused who drinks at, say, midnight and has three or four good shots of whiskey between midnight and quarter-past twelve, gets in his car, is apprehended or is in an accident at 1.30 a.m. His blood alcohol reading at that time might be only about .05 or even less, because the alcohol has not been absorbed by his body, but within two hours afterwards his blood alcohol reading might well be up to .09 and he is deemed to have had that blood alcohol reading at the time of the offence by virtue of the certificate. The only way he can beat that is to get leave to call an expert witness and to establish that he had the alcohol just before the accident. That is a two-edged sword.

Mr. Turner (Ottawa-Carleton): Yes, but we have been advised by the experts in this breathalyzer situation that the two-hour period is a fairly stable period when there will not be a significant breakdown in the blood alcohol content. In the situation that you describe the guy is going to be so boiled anyway we are not going to shed too many tears over a graph going up and across this .08 line. We think within the two-hour period there is going to be very insignificant deterioration in that reading.

Mr. Hogarth: Well, dealing with Section 224, which I take it we are, sir,...

The Chairman: No; actually we are on Section 223. I would like to restrict the discussion to Section 223 to see if we cannot make a little progress here.

[Interpretation]

Si à minuit, par exemple, une personne assise dans sa voiture dont la teneur d'alcool dans le sang est de .08, vers deux heures moins quart, normalement, il aurait dû tom-

ber à environ 0.65. Ce qui se passe c'est que si on le confronte avec cette demande et qu'on procède à ce test dans les deux heures auquel on ajoute le certificat mentionné à la page 38, ayant constaté que la teneur d'alcool était de 0.65 au moment du délit. C'est évidemment un avantage pour le prévenu, car on ne peut pas l'inculper.

M. Turner (Ottawa-Carleton): C'est exact.

M. Hogarth: A moins qu'on revienne au défaut fondamental de cet article, que l'agent de police avait des motifs raisonnables et probables de douter de sa capacité de conduite dès le départ. Il peut, fondé sur les preuves, procéder à l'arrestation. Mais il n'aurait pas recours au certificat.

L'accusé le plus durement touché, parce que le fer a deux tranchants, c'est l'accusé qui se met à boire, disons à minuit; il a trois ou quatre bons coups de Whisky entre minuit et minuit et quart et il entre dans sa voiture et est appréhendé ou a un accident à 1 h. 30. A ce moment-là, sa teneur en alcool pourrait être de .05 ou moins parce que l'alcool a été absorbé dans son corps, mais dans les deux heures qui suivent, la teneur en alcool pourra être remontée à .09 et il est à ce moment-là sensé avoir eu cette teneur en alcool aux termes du certificat. La seule façon qu'il puisse s'en tirer, c'est d'obtenir la permission d'utiliser les services d'un expert pour prouver qu'il avait absorbé l'alcool juste avant l'accident. C'est une arme à deux tranchants.

M. Turner (Ottawa-Carleton): Mais les spécialistes disent que la période de deux heures est une période de stabilité relative. Il n'y aura pas à ce moment-là de changements notables de la teneur en alcool du sang. Dans la situation dont vous avez parlé, le bonhomme en question restera dans le même état pendant les deux heures. Le graphique ne sera pas sensiblement modifié.

M. Hogarth: Eh bien, au sujet de l'article 224, dont nous parlons, monsieur,...

Le président: J'aimerais bien que nous en restions à 223 pour voir si nous ne pourrions pas avancer un petit peu.

[Texte]

Mr. Hogarth: I appreciate that, sir, but unfortunately it correlates with these following sections. I am not too concerned about the two hours because it could be any reasonable time and it would be a question of expert testimony. But if we are ruling drunken drivers off the road, why is it that you did not adopt the English practice and say that any peace officer, who had reasonable and probable grounds to believe that a man had been consuming alcohol and driving, could demand that he take the test?

It appears to me that these people at .08 are a menace as you have clearly stated this morning. If they are a menace, why does the police officer have to have that additional amount of evidence? Why can he not, as is the English practice, take him in and give him a breathalyzer test?

Mr. Turner (Ottawa-Carleton): I want to point out, Mr. Hogarth, with the greatest respect that your questions do not have consistency in this sense: Some of the questions are directed towards lessening the offence, and some of the questions are directed to why it is not tougher, and I want to point that out to you.

Mr. Hogarth: In what way, sir?

Mr. Turner (Ottawa-Carleton): You are now asking me why we do not have the tougher aspects of the legislation that are found in the United Kingdom Road Safety Act 1967. In the United Kingdom Road Safety Act it is true that a constable may require—and I am now quoting from Section 2 of the Road Safety Act 1967 of the United Kingdom:

2.—(1) A constable in uniform may require any person driving or attempting to drive a motor vehicle on a road or other public place to provide a specimen of breath for a breath test there or nearby, if the constable has reasonable cause—

- (a) to suspect him of having alcohol in his body; or
- (b) to suspect him of having committed a traffic offence while the vehicle was in motion:

Now, sub-paragraph (2) reads:

(2) If an accident occurs owing to the presence of a motor vehicle on a road or other public place, a constable in uniform may require any person who he has reasonable cause to believe was driving or attempting to drive the vehicle at the time of the accident to provide a specimen of breath for breath test...

Any person!

[Interprétation]

M. Hogarth: Je regrette, mais ceci a un rapport avec les trois articles qui suivent. Les deux heures m'importent peu, parce que ce pourrait être un délai raisonnable qui pourrait faire l'objet d'un témoignage d'expert. Mais comment se fait-il, si nous obligeons les chauffeurs incapables à conduire à quitter la route, pourquoi n'avons-nous pas adopté la pratique anglaise de dire que tout agent de la paix qui avait de bonnes raisons de croire qu'un homme avait consommé de l'alcool et qu'il conduisait, qu'il pourrait exiger de lui qu'il se soumette à un test.

Si ces gens qui ont une teneur en alcool de .08 constituent une menace, comme vous l'avez dit clairement ce matin, comment se fait-il alors que l'agent de police doit avoir cette preuve additionnelle? Pourquoi ne peut-il pas, comme en Angleterre, l'arrêter et lui donner un test au ivressomètre?

M. Turner (Ottawa-Carleton): Je veux vous souligner, en toute déférence, monsieur Hogarth, que votre question n'est pas logique dans ce sens: certaines des questions visent la diminution de l'infraction et d'autres, l'augmentation de celle-ci, et c'est ce que je veux vous souligner.

M. Hogarth: De quelle façon, monsieur?

M. Turner (Ottawa-Carleton): Vous me demandez maintenant pourquoi nous n'avons pas adopté les aspects les plus durs de la Loi sur la circulation de 1967 en Angleterre? Je cite ici l'article 2 de la loi britannique, Loi sur la sécurité routière ou *Road Safety Act* de 1967:

2.(1) Un agent de police en uniforme peut exiger qu'une personne conduisant ou cherchant à conduire une voiture automobile sur une route ou dans un autre lieu public, fournisse un échantillon de son haleine si l'agent de police a de bonnes raisons de:

- a) de le soupçonner d'avoir de l'alcool dans son organisme; ou
- b) de le soupçonner d'avoir été coupable d'une infraction à la circulation pendant que la voiture circulait.

Il y a le sous-alinéa (2) qui dit:

(2) S'il y a un accident à cause de la présence d'une voiture automobile sur une route ou dans un autre lieu public, un agent revêtu de son uniforme, peut exiger de toute personne dont il a de bonnes raisons de croire qu'elle était inapte à conduire au moment de la conduite, de fournir un échantillon de son haleine.

Il s'agit ici donc de toute personne.

[Text]

Mr. Murphy: What is the offence, by the way?

Mr. Turner (Ottawa-Carleton): That is the same offence we have. It is a statutory offence. You take the test and if you have a statutory blood level of .08 per cent you are subject to penalties similar to those in the Canadian legislation. Now, why did we not just say, "The constable suspects that you have alcohol in your blood?" Because we did not want policemen standing outside pubs and standing outside taverns and just picking people up, which was the great criticism of the British Act. We wanted the police officer to have

...reasonable and probable grounds... that the man was impaired when he was driving. We just did not want the police to be able to stand outside the tavern and watch the boys come out and then—boom!

Mr. Hogarth: Mr. Minister, might I point out one obvious defect that arises out of that decision, and I do not want you to get the idea that in my previous remarks I was suggesting that the .08 should be an indictable offence. I merely said that if you are of the opinion that a .08 driver is impaired you might as well call him impaired and not play around with the second offence of having that reading. That was my earlier point. I want to make clear my position that I think the .08 offence should be a summary conviction offence and I think the breathalyzer test should be demandable by a peace officer any time he suspects a driver has been drinking. I think it should be the same as the English legislation.

Now, the point is that you will not get a one-count indictment with respect to impaired driving. If the peace officer has reasonable and probable grounds to believe the man is impaired, he has something more than the mere fact that the man has been drinking and he is going to arrest him. Now, he has to justify that arrest.

Therefore, the first count in that charge is going to be impaired driving. The second count in all likelihood will be a .08 statutory offence if it is not deemed by judicial authority to be included in the first count. But if he does not take the test, the first count will be impaired and the second count will be his refusal to take the test, and there are minimum penalties on each of those.

It appears to me that we are getting into a position where we are becoming almost, if I

[Interpretation]

M. Murphy: En passant, quelle est l'infraction?

M. Turner (Ottawa-Carleton): C'est la même infraction que nous avons, c'est une infraction contre la loi. Vous prenez le test et si vous avez la teneur en alcool dans le sang de .08 p. 100, vous êtes passibles aux mêmes peines que celles imposées par la loi canadienne. Pourquoi nous ne nous sommes pas contentés de dire: «Si l'agent de police soupçonne que vous avez de l'alcool dans le sang.» Parce que nous ne voulions pas que les agents de police soient à la porte des bistros, ou des tavernes pour arrêter les gens en sortant, ce qui est le caractère un peu inadmissible de la loi britannique. Nous voulions que l'agent de police ait

...de bonnes raisons de croire... que la personne était inapte à conduire et conduisait. Nous ne voulons pas que l'agent de police puisse être à la porte de la taverne pour arrêter les gens avant qu'ils montent en voiture, ou au moment où ils montent en voiture.

M. Hogarth: Monsieur le ministre, je ne voudrais pas que vous prétendiez que vous puissiez conclure de mes observations concernant .08 p. 100 dans le sang constituait un délit. Ce que je voulais dire c'est que si vous parlez d'inaptitude à conduire, vous ne devriez pas créer un deuxième délit, le délit d'avoir une teneur en alcool. Pour moi, le délit de .08 devrait être un délit punissable sur déclaration sommaire de culpabilité et je pense que le test d'ivressomètre devrait être exigible par un agent de police chaque fois qu'il peut soupçonner qu'une personne a bu, et il va l'arrêter.

Il doit maintenant justifier cette arrestation. Si l'agent de police a de bonnes raisons de croire que la personne était inapte à conduire. Dans ces conditions, il y a quelque chose de plus que le seul fait que le type ait bu, et il va l'arrêter. Il faut pourtant que l'agent de police justifie cette arrestation.

En conséquence, le premier chef, ici, va être: Inaptitude à conduire avec facilité affaiblie par l'utilisation de l'alcool; le deuxième chef, selon toute vraisemblance, le délit d'avoir eu une teneur en alcool de .08 p. 100 dans le sang. Si on se refuse de se soumettre à l'épreuve, le premier chef d'accusation sera: Inaptitude à conduire avec facilité affaiblie par l'alcool et le deuxième chef sera: refus de se soumettre au test. Il y a des peines mini-

[Texte]

may use the expression, harsh in the way this is going to operate; harsh in the sense that it is not going to rule the drunken driver off the road. It is merely going to be harsher on those who are impaired already and get caught. I think that is going to be the effect if we are not careful.

The Chairman: If I may interject, I know there is some difference of opinion about these penalties under these sections, and it is my understanding that this particular aspect will be delved into on Tuesday. If we can proceed to the other sections I think it would be in the interests of the Committee.

Clause 16, proposed section 223. (1) agreed to.

Clause 16, proposed section 223. (2) agreed to, less subsections (a), (b) and (c).

On Clause 16, proposed section 224—Driving with more than 80 mgs. of alcohol in blood.

The Chairman: I think we should stand Section 224. This includes penalties.

Mr. Turner (Ottawa-Carleton): Well, what about the principle of it?

The Chairman: Shall Section 224 carry with the exception of (a) and (b)?

Mr. Hogarth: We are also dealing with whether it should be indictable or a summary conviction.

Clause 16, proposed Section 224, agreed to, less subsections (a) and (b).

Clause 16, proposed Section 224A. (1) (a) agreed to.

On Clause 16, proposed Section 224A(1)(b)—Result of chemical analysis

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Mr. Hogarth: Mr. Minister, you stated in your opening remarks the last day, particularly to Mr. Jerome, that the basis of the admissibility of the evidence of any bodily substance does not lie in the same field of law as concessions or admissions and of that there can be no doubt. Why are we concerned with whether or not the accused was warned that he need not give the sample? As I understand it, he need not be warned in common law in any event.

Mr. Turner (Ottawa-Carleton): This is part of the common law as you stated, Mr. Hogarth. This is just a clarification; it is found in other parts of the Code and I am trying to find it. It is found at the moment in Section 224 (3) of the Code, as you know.

[Interprétation]

mums en ce qui concerne ces deux chefs d'accusation. Nous devenons, si on me permet l'expression, assez durs parce que l'on ne va pas faire disparaître les chauffeurs ivres, nous devons nous montrer durs pour ceux qui sont déjà inaptes à conduire et qui se font attraper. Et voilà l'effet de la loi.

Le président: Je sais que tout ceci prête à controverse. Les sanctions prêtent à controverse. Je crois comprendre que cet aspect de la question sera examiné mardi.

L'article 16 du Bill, relatif à l'article 223(1) du Code est adopté.

L'article 16 du Bill, relatif à l'article 223(2) du Code à l'exception des sous-alinéas a), b) et c) est adopté.

L'article 16 relatif à l'article 224—*Fait de conduire lorsqu'on a plus de 80 mg d'alcool dans le sang*

Le président: Je crois que nous devrions réserver l'article 224. Il comporte des peines.

M. Turner (Ottawa-Carleton): Oui, mais le principe?

Le président: L'article 224 est-il adopté sauf a) et b)?

M. Hogarth: Nous traitons aussi d'accusation ou de condamnation sommaire.

L'article 16, du Bill relatif à l'article 224 est adopté, sauf les sous-alinéas a) et b).

L'article 16 du Bill, relatif à l'article 224A (1) du Code est adopté.

L'article 16 du Bill, relatif à l'article 224A (1) b) du Code—Résultat de l'analyse chimique.

M. Hogarth: Monsieur le Ministre, vous avez dit au début en répondant notamment à M. Jerome, que le fondement de l'admissibilité du témoignage constitué par une substance organique n'était pas visé par les mêmes dispositions de la loi qui visent les aveux par exemple. Nous en convenons. Pourquoi ne disons-nous pas ici clairement de ne pas obliger de fournir cet échantillon parce que en «common law» on n'a pas besoin de le prévenir.

M. Turner (Ottawa-Carleton): C'est une question de «common law» comme vous l'avez dit. On le trouve dans d'autres parties du code, j'essaie de le trouver. On le trouve actuellement à l'article 224 (3) du Code, comme vous le savez.

[Text]

Mr. Hogarth: I just wonder why we have that section at all in the light of your opening remarks.

Mr. Turner (Ottawa-Carleton): You have taken this point up, for instance, on other sections of the bill—that when a common law principle is sufficiently recognized by the courts a statutory enactment of it is redundant, and there may be something in that. This just states what the law is.

Mr. Hogarth: The thing that concerns me about proposed section 224A (1) (b) is that when you put in parenthesis the words

... (other than a sample taken pursuant to a demand made under subsection (1) of section 223) ...

that section becomes inconsistent with the subsequent section because it leads me to believe that where the sample is taken there he should get some kind of a warning.

Mr. Turner (Ottawa-Carleton): The underlined words in the parenthesis are added because as a result of an enacting Section 223 there are circumstances in which a person is in fact bound to give a sample.

Mr. Hogarth: Yes.

Mr. Turner (Ottawa-Carleton): Then a warning is irrelevant, as Mr. Scollin says.

Mr. Hogarth: Could that whole section not be deleted without being offensive to the law? Then you would not get confused with when you have to warn and when you do not have to warn and so forth.

I think if you read that, sir, in conjunction with the subsequent section you would see how the judiciary might well become confused as to what Parliament meant by that section. But I am not prepared to labour that today. Mr. Chairman, if you want to pass on it. I think you might well see some inconsistencies there.

Mr. Turner (Ottawa-Carleton): It is a question of opinion. We think the drafting is clear on this.

The Chairman: Shall Clause 16, proposed section 224A (1) (b) carry?

Some hon. Members: Agreed.

On Clause 16, proposed section 224A (1) (c).

Mr. Valade: Mr. Chairman, I am sorry but I would like to ask the Minister, in view of all the objections that were made during the last couple of sessions on these matters and,

[Interpretation]

M. Hogarth: Mais je me demande pourquoi cet article-là existe, à la lumière de vos premières observations.

M. Turner (Ottawa-Carleton): Vous avez déjà soulevé ce point pour d'autres articles du bill, à savoir que lorsque le principe de common law est définitivement reconnu par les tribunaux, il est inutile d'en parler dans la loi écrite.

M. Hogarth: Mais ce qui me préoccupe, en ce qui concerne l'article 224A(1)(b), c'est que lorsque vous mettez entre parenthèses les mots

.. (autre qu'un échantillon prélevé en conformité d'une sommation faite en vertu du paragraphe (1) de l'article 223 ...

Cet article devient incompatible avec l'article suivant, car il me semble qu'on devrait prévoir en même temps une espèce d'avertissement.

M. Turner (Ottawa-Carleton): Les mots soulignés entre parenthèses sont ajoutés parce que, par suite de l'adoption de 223, dans certaines circonstances, la personne est obligée de donner un échantillon.

M. Hogarth: Oui.

M. Turner (Ottawa-Carleton): Comme dit M. Scollin, l'avertissement est superfétatoire.

M. Hogarth: Est-ce qu'on ne pourrait pas différer tout cet article sans inconvénient? On ne serait plus alors embrouillés, en ce qui concerne l'avertissement à donner ou à ne pas donner.

Vous verrez ici comment les magistrats pourront ne pas très bien comprendre ce qu'entendait le Parlement par cela. Mais je ne voudrais pas insister là-dessus si nous devons passer à autre chose. Vous pourriez quand même peut-être voir là certains illogismes.

M. Turner (Ottawa-Carleton): C'est une question d'opinion. Nous pensons que le texte est clair.

Le président: L'article 16, projet d'article 224A(1)(b) est-il approuvé?

Des voix: D'accord.

Article 16, projet d'article 224A(1)(e).

M. Valade: Monsieur le président, vu toutes les objections qui ont été exprimées ici depuis deux séances, vu le caractère obligatoire des épreuves, pourquoi le ministre n'envisage-

[Texte]

more specifically, on compulsory test-taking by the individual, why he should not consider having these tests made voluntary for a trial period, for example one year, and then if the Department is satisfied...

Mr. Hogarth: It is voluntary now.

Mr. Valade: No, but you have to take the test—you have to submit to it. I am talking about the individual refusing the test for a trial period to see how these things work out, and then after a year this could be amended, if necessary.

I suggest this because of the opposition to it and the strong views presented in this regard by very knowledgeable lawyers, as my friend, Mr. Hogarth, across the way and others. There were editorials in newspapers across the country to the effect that perhaps we are being too rigid right now and perhaps, if necessary, Parliament could amend the law at a later date. In this way we would also, as suggested by Mr. Peters, be protecting the rights of the individual. We could wait and see how it works.

Mr. Turner (Ottawa-Carleton): The voluntary test did not work too well in Ontario, Mr. Valade.

Mr. Peters: They had nobody trained to do it.

Mr. Turner (Ottawa-Carleton): The number of tests diminished quite appreciably.

The main answer to your question, as I see it, is that if the test is not compulsory then the statutory offence of a blood alcohol content is just meaningless because there is no way of enforcing it.

Mr. Hogarth: There can be no doubt about that.

The Chairman: Shall Subsection (c) carry?

Mr. Hogarth: Just a moment, Mr. Chairman. Mr. Turner, surely we are going to get this nonsense out of here about giving a sample of breath to the accused, are we not? This is in (c) (i).

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Mr. Turner (Ottawa-Carleton): I will say this to you, Mr. Hogarth. You and I have talked privately about this. At the moment there is no fool proof sample procedure available. I will give an undertaking to the Committee that we will not proclaim this section until we have one available, but we think we ought to have it. We ought to have the section ready if we can get a proper sample procedure approved.

[Interprétation]

rait-il pas de dire que ces épreuves pourraient être volontaires pendant une période d'essai, pendant un an, par exemple. Et si le ministère est satisfait...

M. Hogarth: C'est actuellement volontaire.

M. Valade: Je me demande si on ne pourrait pas permettre à l'individu de refuser de se soumettre à un test pendant une période d'essai, pour voir l'effet que cela pourra avoir. Puis, après un an, on pourrait modifier cela, si nécessaire.

J'exprime cette vue-ci vu l'opposition très violente à certaines des propositions ici, faites par des savants juristes comme notre ami Hogarth, qui siège de l'autre côté de la table. Est-ce que nous ne nous montrons pas ici trop sévères. Est-ce que ce Comité, ou est-ce que le Parlement ne pourrait pas modifier la loi plus tard, ce qui pourrait peut-être répondre à certaines des objections de M. Peters.

M. Turner (Ottawa-Carleton): Le test bénévole n'a pas marché très bien en Ontario, monsieur Valade.

M. Peters: Il n'y avait personne de compétent pour le faire.

M. Turner (Ottawa-Carleton): Le nombre de tests a diminué de beaucoup.

Si le test reste volontaire, le reste de ces discussions n'ont plus de sens puisque nous n'aurons plus de moyens d'appliquer notre loi.

M. Hogarth: Il n'y a aucun doute là-dessus.

Le président: Le paragraphe (e) est-il approuvé?

M. Hogarth: Un instant, monsieur le président; est-ce que nous n'allons pas faire disparaître le paragraphe (e)(i), où il est question de donner un échantillon de son haleine à l'accusé, ce qui n'a aucune espèce de sens, n'est-ce pas? Est-ce que nous ne devrions pas faire disparaître cette disposition?

M. Turner (Ottawa-Carleton): Voici, monsieur Hogarth. Nous en avons déjà parlé. Actuellement, il n'y a pas moyen de conserver un échantillon de façon absolument sûre pendant longtemps. Mais nous n'adopterons pas cet article avant que ce moyen existe. Mais dès qu'il y aura un moyen de conservation d'échantillons en existence, nous adopterons cet article.

[Text]

Mr. Hogarth: Unfortunately sir, if you hold this section in the bill you get into trouble with your technician's certification over on page 39 because he has to say that the accused requested a specimen. There is a definite conflict there, in any event, which I will point out in a moment.

Mr. Turner (Ottawa-Carleton): We are satisfied that we can proclaim this in such a way that it will isolate the giving a sample provision sufficiently from the certificate as not to complicate it. We have already contemplated this.

Mr. Hogarth: That may be fine. The next problem is this. You will note sir, if I may point it out to you, that subparagraph (i) of paragraph (c) says:

(i) at the time the sample was taken, the person taking the sample offered to provide to the accused...

That is to say, the motivation came from the person taking the sample. He offered to give to the accused. If you will look at the certificate of the qualified technician on page 39, paragraph (f) (iii) (A) all he has to put in the certificate is whether the accused requested a specimen. Should it not be consistent and say whether he offered to the accused a specimen? You see, most of these persons will not know, even as and when this might be proclaimed, that they were entitled to a specimen and if you provide in the one instance that he has to offer it to him it seems that the certificate should say that he did offer it to him, not that he asked for it.

Mr. Turner (Ottawa-Carleton): Will you give us two minutes on this one? It seems to make sense, but I would like to look into that a little more carefully.

Mr. Christie (Assistant Deputy Attorney General, Department of Justice): Mr. Hogarth, would you turn to page 39 and go down to subparagraph (iii) (A).

Mr. Hogarth: Yes.

Mr. Christie: I take it that your point is strike out the word "requested" and substitute the phrase...

Mr. Hogarth: "Whether the accused was offered a specimen." There is a big difference in the connotation.

Mr. Chappell: Mr. Chairman, before you make that change I would like to make an alternative suggestion that might be helpful. I say with respect that I think some of your difficulties could be overcome if you would follow my earlier suggestion. I think para-

[Interpretation]

M. Hogarth: Mais cet article suscitera une difficulté en ce qui concerne le certificat de l'analyste, à la page 39, car il doit dire que l'accusé a demandé un échantillon. Il y a ici une contradiction que je vais vous indiquer dans un instant.

M. Turner (Ottawa-Carleton): Nous sommes convaincus que nous pouvons proclamer la loi de telle façon que cela distinguera la disposition relative au prélèvement des échantillons et la disposition relative à la délivrance du certificat. Nous avons déjà envisagé cela.

M. Hogarth: Bon, parfait. Voici quel est le problème. Vous remarquerez aussi, monsieur, si vous me permettez, que l'alinéa (e)(i) dit:

«si, au moment où l'échantillon a été prélevé, la personne qui le prélevait a offert de fournir au prévenu, pour son propre usage...»

C'est-à-dire que la motivation vient de la personne qui prélève l'échantillon. Si vous regardez le certificat du technicien, page 39, à l'alinéa (f)(iii)(A), tout ce qu'il a indiqué sur le certificat, c'est si le prévenu a demandé un échantillon. Ne devrions-nous pas être logiques? Est-ce qu'on ne devrait pas dire s'il a offert un spécimen à l'accusé? La plupart des personnes en cause ne sauront pas qu'elles avaient droit à un spécimen. Si vous prévoyez dans un cas qu'elle doit l'offrir, on devrait indiquer dans le certificat qu'elle l'a effectivement offert, non pas seulement que l'accusé l'a demandé.

M. Turner (Ottawa-Carleton): Donnez-nous deux minutes là-dessus. Cela semble assez logique, mais j'aimerais quand même regarder cela d'un peu plus près.

M. Christie (Sous-procureur général adjoint, ministère de la Justice): Monsieur Hogarth, allez à la page 39, au sous-alinéa (iii) (A).

M. Hogarth: Oui.

M. Christie: Vous voulez supprimer le mot «demandé» et lui substituer la phrase...

M. Hogarth: «Si on a offert un échantillon à l'accusé.» Le sens n'est vraiment pas le même.

M. Chappell: Monsieur le président, avant qu'on apporte ce changement, je voudrais faire une autre proposition qui pourrait être utile. Certaines de vos difficultés pourraient disparaître si vous suiviez mon autre idée. Je pense que l'alinéa (e)(i) pourrait être conservé

[Texte]

graph (c) (i) could stand if we added after "specimen of the breath" the words "or did in fact provide or offer to provide a sample of urine or of blood".

Then for all these areas where that balloon is going to be so awkward they could use the urine sample in the meantime for the accused.

Mr. Turner (Ottawa-Carleton): You will have to repeat your point, Mr. Chappell, because we were thinking about the other one here. When we get to page 39, Mr. Chairman, paragraph (f) (iii) (A), we will stand it and look at the drafting of it.

Mr. Chappell: Mr. Chairman, I mentioned earlier that the accused should be provided with an alternative sample for his own test-

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ing. I think perhaps paragraph (c) (i) could remain if we added after "specimen of the breath" the words "or did in fact provide or offer to provide a sample of urine or blood".

I feel that in many areas a urine sample would be much easier to handle—and it is certainly most inexpensive to keep a few bottles costing only a few pennies in a police station.

Mr. Turner (Ottawa-Carleton): Mr. Chairman, it is always open to the accused to provide his own evidence. If in terms of experience we find that we need this we can contemplate it at that stage.

Mr. Chappell: What I cannot understand is, what is the big difficulty in keeping those urine bottles there? I think it would have a sobering effect on the tester if he knew there was going to be or could be a back-up test.

Mr. Turner (Ottawa-Carleton): Well, you see, we have made a conscious policy judgment that we have not made the blood or urine test compulsory here. It is only a compulsory breath test we are talking about. You are opening up a new avenue of expertise too, Mr. Chappell, in how to transfer the urine result into a breath result.

Mr. Chappell: Do they not both go back to blood? I have always thought breath was translated back to blood to get the effect on the brain. So would not the urine be translated back to the blood?

[Interprétation]

de l'haleine», les mots «ou a fourni effectivement, ou offert de fournir un échantillon d'urine ou de sang».

En ce qui concerne donc tous les cas où le ballon pourrait n'être pas utile, on pourrait utiliser l'urine ou le sang, au bénéfice de l'accusé.

M. Turner (Ottawa-Carleton): Est-ce que vous ne pourriez pas répéter, monsieur Chappell, nous étions en train de penser à autre chose? Lorsque nous en serons à la page 39, alinéa (f)(iii),(A), nous pourrions réserver cela et voir un peu le texte.

M. Chappell: Je disais plus tôt que le prévenu devrait pouvoir conserver un échantillon pour pouvoir faire effectuer lui-même un

test. L'alinéa (c)(i) pourrait rester si nous ajoutons, après les mots «échantillon de l'haleine», les mots «ou a fourni effectivement, ou offert de fournir un échantillon d'urine ou de sang».

J'ai l'impression que, dans bien des cas, l'échantillon d'urine sera beaucoup plus facile à manutentionner et il ne coûtera pas cher d'en conserver quelques bouteilles dans un poste de police. Cela ne coûterait que quelques sous.

M. Turner (Ottawa-Carleton): Monsieur le président, l'accusé peut toujours apporter ses propres témoignages. Si l'expérience nous démontre que nous avons besoin d'une disposition comme celle-là nous pourrions considérer la chose à ce moment-là.

M. Chappell: Quelle difficulté si grande y a-t-il à garder ces bouteilles d'urine à cet endroit? Je crois que cela pourrait rassurer l'analyste de savoir qu'il y aura, ou pourrait y avoir un test de recoupement.

M. Turner (Ottawa-Carleton): Nous avons consciemment établi un principe général de ne pas rendre le prélèvement sanguin et le test de l'urine obligatoires ici. C'est d'un test obligatoire de l'haleine dont nous parlons. Vous vous engagez aussi dans un nouveau champ d'expertise, monsieur Chappell, à savoir, comment transformer un rapport sur l'urine en un rapport sur l'haleine.

M. Chappell: Les deux ne reviennent-ils pas au sang? J'ai toujours cru que l'haleine était retransmise dans le sang pour ensuite produire un effet sur le cerveau. L'urine ne serait-elle pas reprise par le sang de la même manière?

[Text]

Mr. Turner (Ottawa-Carleton): To translate it from one to the other you need, you know, an expert to translate it. I think your suggestion at this stage is overcomplicating the law, Mr. Chappell.

Mr. Peters: Mr. Chairman, I am in agreement with Mr. Chappell. Most of you are lawyers and I respect your arguments on these fine points but you really have not given the accused any basis for establishing as a right a defence, and this suggestion of Mr. Chappell's, it seems to me, is one that should be included with the warning that the accused has the right to do this so that he has a defence. The officer who stops the man on the road has convicted him the same as if he had taken him to court. There is going to be absolutely no defence against this whatsoever.

I think the public will agree it is all right in most cases, but I think there are exceptional cases where the man should know that he has certain recourse and he may not be able to think about that himself at the time. He may not have read the newspaper account that he was entitled to this. I think he should be warned and I think he should have this right. If he takes a urine sample then his lawyer will say that this urine sample says the guy was not drunk and the court is going to have to relate the breathalyzer results with the urinalysis, and that makes a defence, as I see it. It may be a bad defence, it may be a poor defence, it may not be a successful defence but it is a defence. From a layman's point of view what you are really saying is that the person who takes that original sample convicts this man. You might as well forget the court because that is not of any damn importance. The court is not going to matter a hoot. It is the little guy who stops you on the road—the police officer with two weeks' training who convicts you, and it seems to me, Mr. Minister, that you should consider some kind of protection for a defence because there is not going to be any court case. Even under unusual circumstances the little guy is not going to have any defence unless we provide him with a method of having one.

Mr. Turner (Ottawa-Carleton): The defence is open to the accused to introduce any type of contradictory evidence he wants.

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Mr. Peters: But he does not have any. He does not have a test tube with him. He may not know he has the right to do this. You say

[Interpretation]

M. Turner (Ottawa-Carleton): Je pense qu'il faudrait un spécialiste pour nous éclairer. J'ai l'impression que tout ça complique un peu trop la loi, monsieur Chappell.

M. Peters: Monsieur le président, je suis de l'avis de M. Chappell. Vous êtes en majorité des avocats et je respecte vos arguments sur ces questions délicates, mais vous n'avez véritablement pas donné à l'accusé, de base sur laquelle il pourrait appuyer sa défense en tant qu'elle représente un droit, et la proposition de M. Chappell, à mon avis, devrait être incluse avec avertissement que l'accusé a la droit de le faire pour établir sa défense. Mais voici l'agent de police qui a arrêté le bonhomme sur la route, l'a condamné avant même qu'il soit traduit devant un tribunal. Aucune défense n'est possible contre ce procédé. Je crois que le public conviendra que la méthode est admissible dans la plupart des cas.

Mais je crois qu'il se présente des cas exceptionnels, où une personne devrait savoir qu'elle dispose d'un certain recours, et il se peut qu'elle n'y pense pas elle-même à ce moment-là. Peut-être n'a-t-elle pas lu le journal qui l'informait de ses droits. Je crois qu'il devrait être informé et que ce droit lui appartient. S'il prend un échantillon d'urine, son avocat dira que l'échantillon d'urine démontre que son client n'était pas ivre; le Tribunal devra alors comparer les résultats obtenus au moyen de l'ivressomètre avec ceux de l'analyse d'urine et présenter sa défense. La défense pourra être mauvaise, faible, sans succès, mais il y aura eu défense. Du point de vue d'un profane, vous dites en somme que la personne qui aura pris l'échantillon original condamne l'accusé. Mieux vaudrait faire fi du Tribunal puisqu'il n'a plus aucune sorte d'importance. Le Tribunal ne servira plus à rien. C'est le petit agent de police, celui qui a reçu une formation de deux semaines, qui vous condamne. Il me semble, M. le ministre que vous devriez songer à une certaine forme de protection prévoyant une défense, parce que le procès deviendrait un semblant de justice. Même dans des circonstances exceptionnelles, l'homme sans ressources ne pourra se défendre à moins qu'on lui fournisse les moyens de le faire.

M. Turner (Ottawa-Carleton): L'accusé peut se défendre et faire valoir toutes les preuves contradictoires qu'il voudra.

M. Peters: Mais il n'en possède pas; il n'a même pas une éprouvette. Il se peut qu'il ne sache pas qu'il a droit de le faire. Vous dites.

[Texte]

it is hard to relate the two. Well, that is the lawyers' point of view and this would be the court's case and this would be the legal procedure.

Mr. Turner (Ottawa-Carleton): You would have to have pretty expert evidence because the urine reading is a more delayed reading than the breath reading, and the breath is the fastest accurate test of the state of the blood. It is faster than urine, and so the readings are going to be different and the expert correlation is going to be very, very sensitive and sophisticated. It is open to anybody who finds himself in these circumstances, once he has a lawyer and is under criminal charges, in most provinces now . . .

Mr. Peters: That will not be until the next day.

Mr. Turner (Ottawa-Carleton): No, no. He has a right to telephone a lawyer immediately. I have said to you, Mr. Peters, that I think that this whole question of an accused knowing what his full rights are under the law is something we are going to have to deal with in future amendments and early amendments to the Canada Evidence Act and to this Code. I think when we are dealing with bail we will solve a good deal of the problems that you seem to be concerned about—about a guy being locked up but not knowing about his rights and so on.

Mr. Peters: I am not thinking of the City of Montreal or the City of Toronto. I am thinking of out in the country where you have an officer making the decision and it seems to me that there are not going to be all the sophisticated niceties of an urban community out in a little place with one cell in some little back town.

Mr. Turner (Ottawa-Carleton): Your comment about the police and the feeling of some members that the police cannot be trusted with enforcing this provision fairly is, to my mind, unwarranted and I will tell you why.

I said before that the entire Canadian criminal law has to operate on the assumption that the police are going to do their best to enforce it fairly. We have these words in here, "reasonable and probable grounds". The Canadian courts follow the English common law on this particular point. From Martin's Criminal Code, in the annotation to our Code,

[Interprétation]

qu'il est difficile d'établir un rapport entre les deux. C'est le point de vue de l'avocat et ce serait la substance du procès. La procédure serait légale.

M. Turner (Ottawa-Carleton): Cela vous prendrait des preuves éminemment expertes parce que l'analyse d'urine serait un test qui viendrait après celui de l'ivressomètre, et l'haleine est le moyen précis le plus rapide de déterminer la teneur en alcool dans le sang. C'est plus rapide que l'analyse d'urine et les résultats seront donc différents et l'expertise sera très sensible et très complexe.

Toute personne se trouvant dans pareille situation, après avoir retenu les services d'un avocat et fait l'objet d'une accusation criminelle peut maintenant dans la plupart des provinces . . .

M. Peters: Il ne pourra rien faire avant le lendemain.

M. Turner (Ottawa-Carleton): Non, non, il aura parfaitement le droit de téléphoner tout de suite à un avocat. Je pense, M. Peters, qu'il va falloir que nous traitons toute la question que nous devons aborder en même temps que nous devrions aborder en même temps que seront apportés les prochains et futurs amendements à la Loi sur la preuve au Canada et au présent Code. Je crois que lorsque nous traiterons du cautionnement, nous réglerons bon nombre de problèmes qui semblent vous préoccuper, qu'une personne soit derrière les barreaux sans être avertie de ses droits.

M. Peters: Je ne parle pas de Toronto, ni de Montréal. Je pense à un endroit perdu, à la campagne, où un seul agent de la paix prend les décisions et j'anticipe qu'il ne disposera pas de tous les mécanismes élaborés des centres urbains dans ces endroits isolés qui ne disposent que d'une cellule dans une petite agglomération.

M. Turner (Ottawa-Carleton): Vos observations au sujet de la police et l'idée qu'entre-tiennent certains de nos membres qu'on ne peut faire confiance à la police pour ce qui est de la juste application de cette disposition, est, à mon sens, sans fondement et je vous dirai pourquoi.

J'ai déjà dit que l'ensemble du code pénal doit reposer sur les prémisses que la police fera de son mieux pour appliquer la loi avec justice. Nous avons ici les mots: «motifs raisonnables et probables.» Les tribunaux canadiens suivent le droit commun britannique sur ce point particulier. Du code pénal Martin, dans l'annotation de notre Code, la cause

[Text]

the case of *Dumbell versus Roberts* found at 1944 60 *Times Law Reports*, 231, Scott, L. J., I am going to quote Lord Justice Scott's words, and he is referring, by the way, to a comparable section where he is reviewing the words, "reasonable and probable grounds". "Reasonable and probable" are the words that we find in this section.

The power possessed by constables to arrest without warrant, whether at common law for suspicion of felony, or under statutes for suspicion of various misdemeanours, provided always they have reasonable grounds for their suspicion is a valuable protection to the community; but the power may easily be abused and become a danger to the community instead of a protection. The protection of the public is safeguarded by the requirement alike of the common law and, so far as I know, of all the statutes, that the constable shall before arresting satisfy himself that there do in fact exist reasonable grounds for suspicion of guilt.

We have the words "reasonable and probable cause".

That requirement is very limited. The police are not required before acting to have got anything like a *prima facie* case for conviction. But the duty of making such inquiry as the circumstances of the case ought to indicate to a sensible man is without difficulty, presently practicable, does rest on them; for to shut your eyes to the obvious is not to act reasonably... The British principle of personal freedom, that every man should be presumed innocent until he is proved guilty, applies also to the police function of arrest—In a very modified degree, it is true, but at least to the extent of requiring them to be observant, receptive and open-minded, and to notice any relevant circumstance which points either way, either to innocence or to guilt... I am not suggesting a duty on the police to try to prove innocence; that is not their function; but they should act on the assumption that their *prima facie* suspicion may be ill-founded.

That is the duty imposed on the police and that is the duty the courts look to and that is the defence a man or woman would have if

[Interpretation]

de *Dumbell contre Roberts* qui se trouve dans *Times Law Report*, 1944,60, L. J. Scott, 231, je vais citer les mots de Son Honneur le juge Scott, et il s'en rapporte, incidemment, à un article semblable où il étudie les mots: «motifs raisonnables et probables.» «Raisonnable et probable» sont les mots que nous trouvons dans le présent article:

Le pouvoir dont est revêtu l'agent de police d'arrêter sans mandat d'arrestation soit en vertu du droit commun, ou quand il y a un soupçon d'acte délictueux, à condition qu'il ait toujours des motifs raisonnables sur lesquels sont fondés ces soupçons, constitue une bonne protection pour la population; mais il peut facilement y avoir abus de pouvoir ce qui devient un danger pour la population au lieu d'une protection. La protection du public est assurée par la nécessité qui est la même dans le cas du droit commun, et, autant que je sache, de toutes les lois, que l'agent de police, avant de procéder à une arrestation, s'assurera lui-même qu'il existe bien des motifs raisonnables à l'appui du soupçon de culpabilité.

Nous avons les mots: «motif raisonnable et probable.»

Cette exigence est très limitée. La police n'est pas tenue avant d'agir, d'avoir obtenu des éléments voisins d'un commencement de preuve en vue d'une condamnation. Mais l'obligation de procéder à une telle enquête, comme les circonstances de l'accusation devraient le démontrer à un homme raisonnable, ne pose pas de difficultés, peut être exercée immédiatement et est sa responsabilité. Fermer les yeux devant l'évidence n'est pas agir raisonnablement. Le principe britannique de la liberté personnelle, que tout homme devrait être considéré comme étant innocent jusqu'à ce qu'il soit trouvé coupable, s'applique aussi au rôle du policier quand il procède à une arrestation. D'une façon bien différente, c'est certain, mais il peut être exigé de lui qu'il soit observateur, réceptif, et qu'il ait un esprit ouvert, et qu'il remarque toute circonstance pertinente qui pourra servir dans un sens ou dans l'autre, à établir l'innocence ou la culpabilité. Je ne veux pas dire qu'il est du devoir de la police de tenter de prouver l'innocence. Ce n'est pas son rôle, mais elle devrait agir en présumant que ses soupçons *prima facie* pourraient ne pas être fondés.

Voilà l'obligation imposée à la police et c'est, ce que le tribunal est tenu de considérer, et c'est là la défense qu'aurait un homme

[Texte]

the police did not act on the basis of reasonable and probable grounds.

Mr. Peters: Well, Mr. Chairman, we are asking the same police who are handling traffic to enforce this, I am sure. In the Province of Ontario we have a very large police force and we have a very large and diverse province. I have been told that for every so many miles the police in the Province of Ontario drive their automobiles they must have a traffic violation or they fire them. This is true. In Northern Ontario there may be only 50 cars going by in 200 miles and they have to make so many arrests.

The Chairman: Mr. Peters, you can hear me, I suppose. We are dealing with Clause 16, proposed Section 224A (1) (c) (i).

Mr. Peters: Well, Mr. Chairman, the Minister replied he did not think this should be in, and he used the argument that the police were charged with certain responsibilities. Circumstances may vary, but my experience in enforcing another law, traffic violations, is that they have not shown this particular impartiality in certain respects. I still think there has to be a protection for the person to make a defence. There is no defence against a speed-trap sort of arrangement.

The Chairman: We are off the subject at the present time. Do you have anything further to add, Mr. Peters, on this particular subparagraph?

Mr. Peters: I am not in a position, Mr. Chairman, to offer an amendment because I really do not understand what kind of amendment would protect the accused. But I am just making the suggestion in general that the Minister has the responsibility to help those of us on the Committee who are not legally skilled and I think, in general, he understands the position I am trying to put forward even if the Chairman does not. And I am hopeful . . .

The Chairman: I am trying to understand, Mr. Peters. I understand quite well the position you are trying for.

Shall proposed Section 224A (1) (c) (i) carry?

Mr. Hogarth: Mr. Chairman, we should not carry it now. This is a promulgation clause. This is not going to be promulgated now.

[Interprétation]

ou une femme si la police n'agissait pas en s'appuyant sur des motifs raisonnables et probables.

M. Peters: Monsieur le président, nous demandons à la même police qui dirige la circulation d'appliquer ces règles. Je suis sûr que dans la province d'Ontario nous avons une force policière considérable et nous avons une province très grande et très diversifiée. On m'a dit que la police dans l'Ontario doit rapporter un certain nombre d'infractions au code routier correspondant au nombre de milles qu'elle parcourt en voiture, sans quoi les agents sont congédiés. C'est vrai. Dans le nord de l'Ontario il peut n'y avoir que 50 automobiles sur un parcours de 200 milles, et la police est tenue d'effectuer un certain nombre d'arrestations.

Le président: Vous ne m'avez pas entendu, je pense. Nous parlons de l'article 16 du Bill, relatif au sous-alinéa (1) c) (i) de l'article 224A.

M. Peters: Monsieur le président, le ministre a répondu qu'il ne pensait pas que ceci devait y figurer, et il a ajouté que la police avait certaines responsabilités. Les circonstances peuvent varier, mais mon expérience judiciaire m'a appris que la police n'était pas toujours impartiale. Je pense donc qu'il faut protéger l'accusé. Il ne peut pas se défendre contre cette espèce d'arrangement.

Le président: Mais, nous avons quitté le sujet pour l'instant. Voulez-vous ajouter quelque chose sur ce sous-alinéa en particulier, monsieur Peters?

M. Peters: Non. Je n'ai pas d'amendement à présenter, car je ne sais vraiment pas quel genre d'amendement on pourrait présenter pour protéger l'accusé. Mais je veux seulement dire que le ministre doit aider ceux d'entre nous, ici au comité, qui ne sont pas juristes. Je suis sûr que le ministre comprend si le président lui ne comprend pas ce que je veux dire. Et j'espère...

Le président: J'essaie, monsieur. Je comprend votre argument. Acceptons-nous le sous-alinéa (1) c) (i) de l'article 224A?

M. Hogarth: Monsieur le président, nous ne devrions pas l'adopter maintenant. C'est un article de promulgation, on ne va pas promulguer maintenant?

[Text]

Mr. Turner (Ottawa-Carleton): No, I have just said to the Committee that we are not going to promulgate the sample section until we have a sample that works.

Mr. Hogarth: And that is this proposed Section 224A (1) (c) (i).

Mr. Turner (Ottawa-Carleton): Yes. We can let the Committee see it, but I give the undertaking that it is a proclamation clause.

Mr. Hogarth: That suits me, except that I am somewhat concerned as to what effect it might have on the other parts of this. . .

Mr. Turner (Ottawa-Carleton): We have foreseen that problem, Mr. Hogarth.

Clause 16, proposed Section 224A (1) (c) (i), (ii), and (iii) agreed to.

Mr. Hogarth: Now, just in general, why are those necessary, Mr. Minister? Why does paragraph (c) not read:

(c) where a sample of the breath of the accused has been taken pursuant to a demand made under subsection (1) of Section 223, if

Now forget subsection (1) unless you are going to make that policy, and go right down to (iv):

a chemical analysis of the sample was made by means of an approved instrument operated by a qualified technician,

Why do you have to worry about whether it was put into an appropriate instrument, et cetera?

Mr. Turner (Ottawa-Carleton): These are conditions to protect the accused, to show that these tests were taken under appropriate defined circumstances.

Mr. Hogarth: I see. And that is that a chemical analysis of the sample was made by means of an approved instrument operated by a qualified technician. Is that not right?

Mr. Turner (Ottawa-Carleton): That is what I understand.

Mr. Hogarth: That is simple enough. All I am saying is that subsection (iv) is sufficient, and I do not know why we have to clutter it up with all the rest. Now, is there not an automatic defence in the remainder of this proposed section? It says:

evidence of the result of the chemical analysis so made is, in the absence of any evidence to the contrary, proof of the

[Interpretation]

M. Turner (Ottawa-Carleton): Non, nous n'allons pas promulguer cet échantillon d'article tant que nous n'avons pas un échantillon de meilleure qualité.

M. Hogarth: Et c'est le sous-alinéa (1) c) (i) de l'article 224A.

M. Turner (Ottawa-Carleton): Oui. Nous pouvons le laisser voir au Comité, mais je garantis que c'est un article de proclamation.

M. Hogarth: C'est parfait, mais je me demande quel effet cela pourra avoir sur d'autres parties du projet de loi.

M. Turner (Ottawa-Carleton): Nous avons prévu ce problème, monsieur Hogarth.

Sous-alinéas (i), (ii) et (iii) de l'alinéa (c) du paragraphe (1) de l'article 224A, de l'article 16 sont adoptés.

M. Hogarth: Pourquoi faut-il ces dispositions, monsieur le ministre? Pourquoi l'alinéa c) ne se lit-il pas

c) lorsqu'un échantillon de l'haleine du prévenu a été prélevé conformément à une sommation faite en vertu du paragraphe (1) de l'article 223, si . . .

Maintenant, oublions tout simplement le paragraphe (1), à moins que vous vouliez en faire une question de principe, et allons directement au sous-alinéa (iv):

(iv) si une analyse chimique de l'échantillon a été faite à l'aide d'un instrument approuvé, manipulé par un technicien qualifié,

Pourquoi toutes ces questions d'instruments appropriés et autres?

M. Turner (Ottawa-Carleton): C'est pour protéger l'accusé, pour montrer que le test a été fait dans des conditions bien définies.

M. Hogarth: C'est-à-dire une analyse chimique de l'échantillon faite à l'aide d'un instrument approuvé, manipulé par un technicien qualifié, exact?

M. Turner (Ottawa-Carleton): C'est ce que je comprends.

M. Hogarth: C'est assez simple. Tout ce que je dis c'est que le sous-alinéa (iv) suffit, je ne vois vraiment pas pourquoi compliquer la question. Est-ce que le reste de l'article ne contient pas une défense automatique? Il dit:

. . . la preuve du résultat de l'analyse chimique ainsi faite fait preuve, en l'absence de toute preuve contraire, de la propor-

[Texte]

proportion of alcohol in the blood of the accused at the time when the offence was alleged to have been committed;

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Well, there is automatically evidence to the contrary.

Mr. Turner (Ottawa-Carleton): *Prima facie* evidence.

Mr. Hogarth: No, but there is automatically evidence to the contrary, because the court can almost take judicial notice that the lapse rate of alcohol in the blood is at a certain percentage, that there is a lapse rate. So if you take a blood alcohol reading at 2:00 a.m., it cannot possibly be said to be the same blood alcohol reading you had at midnight, because there is an automatic lapse rate and its depends on when you consumed, and the circumstances under which you consumed, and so on. And I have in mind .015 per centum per hour. So there is automatically evidence to the contrary, is there not?

Mr. Turner (Ottawa-Carleton): No.

Mr. Hogarth: No?

Mr. Turner (Ottawa-Carleton): No.

Mr. Hogarth: All right, carry on.

Clause 16, proposed Section 224A (1) (c) (iv) agreed to.

Mr. Hogarth: Would you just explain why there is not automatically evidence to the contrary?

Mr. Turner (Ottawa-Carleton): We are saying that within the two-hour period, and we support this with expert evidence that the two-hour period is a fairly stable component . . .

Mr. Hogarth: No, but there is a lapse rate.

Mr. Turner (Ottawa-Carleton): The law is saying that within the two-hour period there is no lapse rate. That is what the law says.

Mr. Hogarth: Yes. But the fact is that there is.

Mr. Turner (Ottawa-Carleton): Insufficient or non-appreciable to affect the . . .

Mr. Hogarth: What evidence do you have of the average lapse rate in the studies that were done down in Wisconsin?

[Interprétation]

tion d'alcool dans le sang du prévenu au moment où l'infraction est alléguée avoir été commise;

Il y a donc automatiquement preuve du contraire.

M. Turner (Ottawa-Carleton): Une preuve *prima facie*.

M. Hogarth: Il y a *ipso facto* preuve du contraire, car le tribunal peut avoir la preuve légale que le taux d'élimination de l'alcool dans le sang est connu. Il y a un taux d'élimination. Si vous faites une lecture de l'alcool dans le sang à 2 heures du matin, on ne peut pas dire que ce sera la même teneur en alcool qu'à minuit, n'est-ce pas, car il y a un taux d'élimination. Celui-ci dépend des circonstances de consommation. Je crois que c'est quelque chose comme .015 p. 100 par heure. Il y a donc automatiquement une contre-preuve, n'est-ce pas?

M. Turner (Ottawa-Carleton): Non.

M. Hogarth: Non?

M. Turner (Ottawa-Carleton): Non.

M. Hogarth: Parfait, alors adoptons.

Article 16 du Bill, relatif au sous-alinéa (iv) de l'alinéa c) du paragraphe (1) de l'article 224A du code est adopté.

M. Hogarth: Est-ce que vous pourriez me dire pourquoi il n'y a pas automatiquement contre-preuve?

M. Turner (Ottawa-Carleton): Nous disons que la période de deux heures, et nous pouvons pour cela invoquer les témoignages de spécialistes, que la période de deux heures est une période de stabilité.

M. Hogarth: Il y a pourtant un taux d'élimination.

M. Turner (Ottawa-Carleton): Dans les deux premières heures il n'y a pas d'élimination.

M. Hogarth: Pourtant il y en a une.

M. Turner (Ottawa-Carleton): Insuffisante ou non appréciable en ce qui concerne . . .

M. Hogarth: Mais, pourtant il y a eu des études au Wisconsin, qu'est-ce que vous en pensez, qu'est-ce que vous pensez du taux d'élimination constaté là-bas?

[Text]

Mr. Turner (Ottawa-Carleton): Well, we reviewed all the evidence backing up this breathalyzer test before...

Mr. Hogarth: What is the average lapse rate? Mr. Chairman, maybe this section can stand and we can obtain that information at a later date. It is just that I am against having a presumption which in fact is not so, cannot be so. And this is what I object to.

Mr. Turner (Ottawa-Carleton): We do not see any other practical way of doing this, Mr. Hogarth. The English statute does not provide any time at all. It is the time between the incident and the test. I suppose it is open on cross-examination to examine the period. We are convinced that a two-hour period does not appreciably affect the concentration one way or the other. It may be that during the two-hour period the concentration would go up? It may be that it will go down. But neither up nor down sufficiently—the graph is not sufficiently severe to affect the presumption here.

Mr. Hogarth: You see, Mr. Minister, if you get away from the obsession you have in these amendments with respect to certificates, an expert could come, the man that took the test—and it is my contention he has to come anyhow—to identify the accused. An expert could come and he could give evidence as to what the accused's reading was at the time of the offence, and he could give evidence as to what in his opinion the lapse rate would have been. And then the court can come to the conclusion as to what his reading was at the time of the offence, and it would not be necessary to draw fictitious presumptions in law as we have drawn here.

And it would also satisfy another component of this, he would be there automatically for cross-examination, and the accused would not have to have the leave of the court to request him to be there. Because when you have to ask the leave of the court to request him to be there, you have to reveal the basis upon which you are going to cross-examine, and that gives the prosecutor lots of time to prepare the witness for his examination-in-chief. So, it is my submission that this should be taken out.

Mr. Turner (Ottawa-Carleton): The reason for the certificate is that we want to, if possible avoid a situation where in every case brought before the courts we are going to have the analyst tied up in court. If nobody

[Interpretation]

Mr. Turner (Ottawa-Carleton): Nous avons examiné toutes les questions que soulevait l'ivressomètre avant de...

Mr. Hogarth: Quel est le taux d'élimination? Monsieur le président, cette question peut attendre, nous aurons les renseignements plus tard. C'est seulement que je n'aime pas avoir une présomption que l'on ne peut pas, à mon avis, défendre. C'est tout ce à quoi je m'oppose.

Mr. Turner (Ottawa-Carleton): Je ne vois pas d'autre façon pratique de procéder, monsieur Hogarth. Vous savez que la loi britannique ne prévoit aucun délai. Il s'agit du délai entre l'incident et le test. En contre-interrogatoire, évidemment, on pourra poser des questions là-dessus. Nous sommes, en tout cas, persuadés que le délai de deux heures n'affecte pas de façon sensible la concentration de l'alcool d'une façon ou d'une autre. Il est possible qu'au cours de cette période de deux heures la concentration puisse augmenter. Elle peut aussi bien diminuer. Mais elle ne peut ni augmenter ni baisser suffisamment pour affecter la présomption prévue ici.

Mr. Hogarth: Voyez-vous, monsieur le ministre, si vous vous écarterez de l'obsession dont vous faites preuve dans ces amendements en ce qui concerne les certificats, un expert pourrait se présenter, de toute façon, l'expert doit se présenter pour identifier l'accusé. Un expert pourrait se présenter et témoigner sur la teneur d'alcool dans le sang au moment de la mesure et il pourrait donner son opinion sur le taux d'élimination qu'il suppose. La Cour peut ensuite conclure quel était le taux au moment du délit et il ne serait plus nécessaire d'imaginer des présomptions fictives en droit, comme nous le faisons ici.

Cela satisferait aussi une autre exigence. L'expert serait là pour le contre-interrogatoire et l'accusé n'aurait pas besoin de demander au tribunal sa présence, car si on doit demander la présence de l'analyste au tribunal, il faut indiquer ses raisons, ce qui donne évidemment tout le temps au ministère public de préparer le témoignage. Je suggère donc qu'on enlève cela.

Mr. Turner (Ottawa-Carleton): La vraie raison du certificat c'est la suivante: nous voulons, si c'est possible, éviter que dans tous les cas l'expert reste présent au tribunal. Si personne ne proteste contre le certificat, le certi-

[Texte]

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challenges the certificate, then the certificate will carry. But the certificate is open to cross-examination at any time, in which case the accused's lawyer or the accused can demand that the analyst come down to court. But I do not know how we could have the analyst doing his analysis in his lab and being in court at the same time every morning testifying to every case. This is why we used the certificate principle, to save his actual presence unless required by an accused.

Mr. Hogarth: Mr. Minister, are you aware of any major police court in Canada today that is using the certificates that are provided in the present Criminal Code? I have never seen a certificate under the present Criminal Code, simply because the prosecutors take the position that the accused has to be identified by the person that gave the test anyhow and it is easier to call him, and this is particularly true when you are using the technician as opposed to an analyst—the analyst being the senior chemist and the technician is merely a man who can operate the machine.

Mr. Turner (Ottawa-Carleton): You may disagree with the technique, but it will depend on how the courts want to interpret it.

The Chairman: Mr. Chappell.

Mr. Chappell: I would just like to ask how you would know the lapse rate until you heard from the accused as to when he had consumed it. It do not see how the analyst could be cross-examined because he would not have that information. If the accused had just consumed the alcohol shortly before he was picked up it could be increasing.

Mr. Turner (Ottawa-Carleton): The analyst will be cross-examined on the sample. The lapse rate is a matter for evidence.

Mr. Chappell: Yes, I quite agree but my point is that I do not see how the analyst's presence for cross-examination on the lapse rate would be helpful unless he knew when the alcohol had been consumed and the court would not know that unless and until the accused gave evidence.

Mr. Hogarth: You can get a lot of that from Crown witnesses. They are generally drinking with him.

Mr. Turner (Ottawa-Carleton): That is an argument between Mr. Hogarth and Mr. Chappell. I am not involved.

Clause 16, proposed Section 224A (1) (c) (iv) agreed to.

[Interprétation]

ficat sera adopté. Mais le certificat pourra être contesté à n'importe quel moment, auquel cas l'avocat de l'accusé ou l'accusé pourra demander la présence de l'expert au tribunal. Je ne pense pas que nous puissions avoir l'expert au tribunal tous les matins pour témoigner et en même temps à son laboratoire. C'est pourquoi nous avons introduit le certificat, pour ne pas l'obliger à être au tribunal si l'accusé ne le demande pas.

M. Hogarth: Est-ce que vous connaissez des tribunaux qui utilisent le certificat actuellement prévu par le Code criminel? Je n'ai jamais vu un certificat, aux termes de l'actuel Code criminel, simplement parce que le procureur estime que l'accusé doit être identifié par la personne qui a procédé à l'analyse. Il est facile de le convoquer surtout si on utilise un technicien plutôt qu'un expert. L'analyste est évidemment un chimiste; le technicien n'est que l'opérateur de la machine.

M. Turner (Ottawa-Carleton): On peut ne pas être d'accord sur la technique, qui dépendra de l'interprétation qu'en donneront les tribunaux.

Le président: Monsieur Chappell?

M. Chappell: Est-il possible de connaître le délai de déperdition avant que l'accusé lui-même ne vous ait dit à quel moment il a consommé l'alcool? Comment l'analyste pourrait-il témoigner sans ces renseignements? Si l'accusé vient de consommer de l'alcool, la teneur sera plus élevée.

M. Turner (Ottawa-Carleton): L'analyste sera interrogé sur l'échantillon. Le rythme de déperdition est un indice probant.

M. Chappell: Je suis tout à fait d'accord, mais je ne vois pas ce que pourrait dire l'analyste sur le temps de déperdition, s'il ne sait pas à quel moment l'alcool a été consommé; le tribunal ne le saura que lorsque l'accusé l'aura dit.

M. Hogarth: Les témoins pourront nous en dire quelque chose. Habituellement ce sont des personnes qui boivent avec lui.

M. Turner (Ottawa-Carleton): C'est un débat entre M. Hogarth et M. Chappell. Je n'y ai rien à voir.

L'article 16 du bill, relatif au sous-alinéa (iv) de l'alinéa (c) du paragraphe (1) de l'article 224A proposé de la Loi, est adopté.

[Text]

Clause 16, proposed Section 224A (1) (d) agreed to.

On clause 16, proposed Section 224A (1) (e). Idem.

Mr. Hogarth: Before we go on, what is the certificate referred to in (e)? If you have the certificate in (d), what is the certificate in (e)? I cannot figure this one out, and I say that with the greatest respect. It says:

(e) a certificate of an analyst stating that he has made an analysis of a sample of any substance or solution intended for use in an approved instrument...

Mr. Turner (Ottawa-Carleton): This is designed to cover, if necessary, the question of the chemical solution which is used in the breath-testing instrument. It is a different certificate. In relation to the first certificate it reads:

...an analyst stating that he has made a chemical analysis of a sample of the blood...

and he states the result of his analysis. The second certificate, if one is required, is a certificate relating to the chemical solutions used in the equipment itself.

Mr. Hogarth: With respect to this bill do you anticipate you will approve anything more than the Berkenstein breathalyzer?

Mr. Turner (Ottawa-Carleton): That is one of the ones we are considering.

Mr. Hogarth: How many are you considering, sir?

Mr. Turner (Ottawa-Carleton): I think the police forces across the country will want to analyze what is available. The one you mentioned is one of them. I think the police are also thinking in terms of gastronometers and all sorts of new sophisticated equipment but the legislation has to be flexible enough to...

Mr. Hogarth: What specific machine does subsection (e) relate to? You must be contemplating the use of that machine. In the Berkenstein breathalyzer you do not analyze the ampoules.

Mr. Scollin: That may very well be but in certain circumstances it might be necessary, as an element of your proof, to analyze the ampoules.

Mr. Hogarth: In the Berkenstein breathalyzer?

Mr. Scollin: Yes, in the Berkenstein breathalyzer.

[Interpretation]

L'article 16 du bill, l'alinéa (d) du paragraphe (1) de l'article 224A de la Loi est adopté.

L'article 16, l'alinéa (e) du paragraphe (1) de l'article 224A de la Loi, Idem.

M. Hogarth: Avant d'aller plus loin, j'aimerais savoir de quel certificat on parle à l'alinéa (e). Ce certificat figure déjà à l'alinéa (d), que fait-il à l'alinéa (e)? J'avoue en toute humilité ne pas comprendre ce qu'il fait là. Il se lit:

e) un certificat d'un analyste déclarant qu'il a effectué une analyse d'un échantillon d'une substance ou solution conçue pour être utilisée dans un instrument approuvé...

M. Turner (Ottawa-Carleton): Celui-ci a trait à la solution chimique utilisée dans l'éthylomètre. C'est un certificat différent. Le premier certificat est rédigé comme suit:

...un analyste déclarant qu'il a effectué une analyse chimique d'un échantillon du sang...

indique le résultat de cette analyse. Le deuxième certificat, s'il est nécessaire, a trait aux solutions chimiques utilisées dans l'appareil.

M. Hogarth: Pensez-vous approuver autre chose que l'éthylomètre Berkenstein, aux termes de ce projet de loi?

M. Turner (Ottawa-Carleton): C'est l'un de ceux que nous examinons.

M. Hogarth: Combien d'appareils examinez-vous en ce moment?

M. Turner (Ottawa-Carleton): Les forces constabulaires du Canada tiendront sans doute à examiner le matériel disponible. Celui que vous avez mentionné n'est qu'un appareil parmi d'autres. La police envisage également de se doter de gastronomètres et de toutes sortes d'appareils perfectionnés; cependant il faut que la Loi soit suffisamment souple...

M. Hogarth: De quel genre d'appareil est-il question à l'alinéa e)? Vous devez quand même envisager l'utilisation de cet appareil. Dans l'éthylomètre Berkenstein, on n'analyse pas les ampoules.

M. Scollin: Cela se peut fort bien, mais dans certains cas, il sera peut-être utile d'analyser les ampoules pour étayer vos preuves.

M. Hogarth: Dans l'éthylomètre Berkenstein?

M. Scollin: Oui.

[Texte]

Mr. Hogarth: Have you ever heard of it being done?

Mr. Scollin: We are anticipating the possibility that this may be required.

Mr. Hogarth: Are you suggesting that you went to all the trouble to put in subsection (e) on the basis that some day somebody may be required to analyze an ampoule from the Berkenstein breathalyzer, and in that case you want a certificate?

Mr. Scollin: One Crown prosecutor in Ontario, whose experience extended to dealing with one of the very first cases on breathalizers involving Dr. Ward Smith and Dr. Rabinovitch, felt that this was a possible lack

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in the legislation and at the time of the trial he felt that this was an area where he was open to losing the case on the ground that what was contained in the ampoule that was received from some manufacturer and looked at by the duly qualified technician only in accordance with the breathalyzer operation could be properly challenged as not containing the proper kind of constituents on which the Berkenstein machine depends. This is not a pure piece of imagination. This is a recommendation from a Crown attorney that has a good deal of experience and who was in fact, involved in a specific case having to do with the breathalyzer test.

Mr. Hogarth: There are the two Saskatchewan court of appeal cases which held that in that province, with respect to the use of the Berkenstein breathalyzer, the Crown must prove the ampoules to show that the ampoules contain the proper amount of potassium dichloride, and so on and so on. Are you suggesting that this certificate is to clear away the judicial wall that has been set up by those cases?

Mr. Scollin: Those cases have held that you must prove the contents. A certificate under (e) will deal with that by an analyst taking a proper scientific sample from the ampoules received from the manufacturer, analyzing it and stating, as set out in (e), that this substance or solution is suitable for the machine.

Mr. Hogarth: Of course, but he has to take the test ampoule as well as the other ampoule to show they are both the same in consistency.

Mr. Scollin: I beg to differ, Mr. Hogarth, (e) is framed in precisely the way it is framed

[Interprétation]

M. Hogarth: Est-ce que cela a déjà été fait?

M. Scollin: Nous prévoyons une telle éventualité.

M. Hogarth: Voulez-vous dire que vous vous êtes donné tout ce mal pour insérer à l'alinéa e) une disposition prévoyant qu'un jour quelqu'un pourrait avoir besoin d'analyser une ampoule de l'éthylomètre Berkenstein; et vous avez émis un certificat à cette fin?

M. Scollin: Un procureur de la Couronne de l'Ontario, qui a été chargé de l'une des premières causes relatives à l'éthylomètre, avec le docteur Ward Smith et le docteur Rabinovitch, estimait que c'était probablement une

lacune dans la loi, et que cette lacune pouvait lui faire perdre son procès, étant donné que le contenu de l'ampoule, qui provenait d'un fabricant quelconque, et que le technicien dûment qualifié ne considérerait qu'en rapport avec l'analyse, pouvait très bien être déclaré non conforme à la composition réglementaire de l'appareil Berkenstein. Il ne s'agit pas d'une histoire inventée, mais d'une recommandation d'un procureur très expérimenté, qui a été chargé précisément d'un cas relatif aux tests d'haleine.

M. Hogarth: Il y a eu également deux cas à la Cour d'appel de la Saskatchewan, où l'on a décidé de procéder à l'analyse des ampoules de l'éthylomètre Berkenstein, pour s'assurer qu'elles contenaient le degré requis de bichlorure de potassium, ou autre élément chimique. Voulez-vous dire que ce certificat a pour but de résoudre le problème juridique qui pourrait se poser dans des cas semblables?

M. Scollin: Ces deux causes ont montré qu'il fallait prouver l'exactitude du contenu. L'obtention d'un certificat, tel que défini à l'alinéa c), résoudra le problème en obligeant l'analyste à prélever un échantillon représentatif du contenu des ampoules, à l'analyser et à déclarer que cette solution est réglementaire.

M. Hogarth: Mais, il doit prendre l'ampoule-échantillon et l'autre, pour montrer que leur consistance soit la même.

M. Scollin: Monsieur Hogarth, je ne suis pas de votre avis, (e) est écrit pour préciser

[Text]

to make it clear that it is open to the analyst to take a sample from a batch and thereupon, on a scientific basis, certify that the rest of that batch is suitable for use.

Mr. Hogarth: The ampoules then have to be marked and traced as to where they go. Not too long ago, Mr. Minister, I suggested that you put a clause in here that once the machine is approved it is deemed to be operating properly from a mechanical point of view, and let it go at that.

Mr. Scollin: That would not be satisfactory, Mr. Hogarth.

Clause 16, proposed Section 224A (1) (e) agreed to.

Clause 16, proposed Section 224A (1) (f) (i) agreed to.

Clause 16, proposed Section 224A (1) (f) (ii) agreed to.

The Chairman: We will stand Clause 16, proposed Section 224A (1) (f) (iii) (A).

Clause 16, proposed Section 224A (1) (f) (iii) (B) agreed to.

Clause 16, proposed Section 224A (1) (f) (iii) (C) agreed to.

On Clause 16, proposed Section 224A (2)—No obligation to give sample except as required under s. 223.

Mr. Hogarth: Mr. Minister, I associate my earlier remarks with respect to Section 224A (1) (b) to this one as well. If no person is required to give a sample, and so on, except breath, evidence that a person failed or refused to give a sample is not admissible. Why should it not be admissible?

Mr. Turner (Ottawa-Carleton): We are just repeating this from the present Section 224A...

Mr. Hogarth: This is my concern, Mr. Minister. Why, if you make a demand that he give a sample of breath, is his refusal to do so admissible against him and an inference may be drawn which is adverse to his position? Why should it not also be drawn if he refuses to give a sample of blood or urine, should the same be requested?

Mr. Turner (Ottawa-Carleton): Because we are only making the breath test compulsory, not the urine and blood test.

Mr. Hogarth: I am not dealing with the compulsion to give it, Mr. Minister, I am dealing with the evidentiary effect of his refusal.

[Interpretation]

que l'analyste a le choix de prendre un échantillon d'un ensemble; ensuite sur le plan scientifique, il peut justifier que le reste de cet ensemble conviendrait à l'utilisation.

M. Hogarth: Les ampoules doivent être marquées et on doit déterminer leur destination. Il n'y a pas tellement longtemps, monsieur le ministre, je vous avais proposé qu'il suffirait d'ajouter que, une fois que la machine a été approuvée elle devrait bien fonctionner, au point de vue de la technique.

M. Scollin: Je ne crois pas que cela soit suffisant.

L'article 16 du Bill, relatif à l'article 224A(1)(e) est adopté.

L'article 16 du Bill, relatif à l'article 224A(1)(f)(i) est adopté.

L'article 16 du Bill, relatif à l'article 224(1)(f)(ii) est adopté.

Le président: Nous réservons l'article 16, article 224A(1)(f)(iii)(A).

L'article 16, article 224A(1)(f)(iii)(B) est adopté.

L'article 16, article 224A(1)(f)(iii)(C) est adopté.

A l'article 16, article 224A(2). Nul n'est tenu de donner un échantillon de sang, sauf en vertu des prescriptions de l'article 223.

M. Hogarth: Monsieur le ministre, pour établir un rapport à ce que je disais précédemment au sujet de 224A(1)b, j'ajoute cela: Si nul n'est tenu de donner un échantillon, excepté ce qui a trait à l'haleine et la preuve qu'une personne a fait défaut ou refusé de donner un échantillon n'est pas admissible. Pourquoi n'est-ce pas admissible.

M. Turner: Nous le répétons justement au présent article 224A...

M. Hogarth: C'est ce qui m'inquiète, monsieur le ministre. Mais si vous exigez de lui qu'il donne un échantillon de son haleine, pourquoi est le refus de donner cet échantillon de son haleine admissible, et on peut en tirer des conclusions défavorables au prévenu. Pourquoi n'en fait-on pas de même lorsqu'il s'agit d'un échantillon de sang ou d'urine, si l'on le demande.

M. Turner (Ottawa-Carleton): Parce que seul le prélèvement de l'haleine est obligatoire, ce qui n'est pas le cas pour le prélèvement du sang et de l'urine.

M. Hogarth: Je ne parle pas de cette obligation d'en donner, monsieur le ministre, mais je parle de l'effet indicateur de son

[Texte]

Why is it that you would draw an inference adverse to his position because of his refusal to give breath, as you do in subsection (iii), but you would not draw the same inference because of his refusal to give a sample of blood or urine.

Mr. Turner (Ottawa-Carleton): Because that is a policy decision. The breath test is the only compulsory test and refusal to take that test will be a statutory offence.

There is no requirement on anybody to provide a sample of urine or to provide a

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sample of blood, and refusal to comply with a request to give a sample of blood or a sample of urine should not be prejudicial to him.

Mr. Hogarth: That, I agree you have made an offence his refusal to give a sample of breath, and I agree with that entirely as a policy decision. But the point is why is it in the one instance it is admissible in evidence to prejudice him but in the other instance it is not, when the rational situation is that both should prejudice him.

Mr. Turner (Ottawa-Carleton): You see, when a test is obligatory or compulsory, Mr. Hogarth, surely it is fair to cast a presumption against him if he refuses to give it.

Mr. Hogarth: Or made an offence?

Mr. Turner (Ottawa-Carleton): Or made an offence. Obviously, the evidential situation flows from its being created an offence. But if there is no compulsory urine test or no compulsory blood test, why should refusal to give a sample of blood or a sample of urine be held against him? Why should that presumption be there at all? So we are just preserving the present statutory provision that there is no obligation to give a sample of urine or blood. That is found in Section 224, Subsection (4) of the present Code.

Mr. Hogarth: I do not find that position too consistent, logically, to tell you the truth.

Mr. Turner (Ottawa-Carleton): Certainly it is logical. Because we are not making the urine test compulsory and we are not making the blood test compulsory, therefore failure to give a sample of urine or blood should not be held against him.

Clause 16 proposed Section 224A, Subsection (2) agreed to.

[Interprétation]

refus; pourquoi tirer des conclusions défavorables au prévenu, du fait qu'il a refusé de donner un échantillon de l'haleine, comme vous le faites aux termes de l'alinéa (iii); mais vous n'en tirez pas les mêmes conclusions du fait qu'il a refusé de donner un échantillon d'urine ou de sang?

M. Turner (Ottawa-Carleton): C'est une question de principe. Le seul test obligatoire est le test de l'échantillon de l'haleine, et le refus d'en donner représente une violation de la loi.

Personne n'est obligé de donner un échan-

tillon d'urine ou de sang. S'il refuse de répondre à la demande de donner un échantillon de sang ou d'urine cela ne devrait pas être défavorable à l'accusé.

M. Hogarth: Je vois que vous avez transformé en délit, son refus de donner un échantillon de son haleine. Je suis tout à fait d'accord avec votre décision, sur le plan théorique. Comment se fait-il que dans un cas, on puisse l'invoquer contre l'accusé alors que dans d'autres, ce ne l'est pas? Tandis que normalement les deux devraient être invoqués contre lui.

M. Turner (Ottawa-Carleton): Lorsqu'un test est obligatoire, monsieur Hogarth, il est normal qu'on le soupçonne s'il refuse de s'y soumettre.

M. Hogarth: Ou transformé en infraction?

M. Turner (Ottawa-Carleton): Oui, évidemment, une situation normale s'ensuit si on en fait une infraction, mais s'il n'y a pas d'analyse d'urine ou de sang obligatoire, pourquoi le refus de donner une échantillon d'urine ou de sang devrait-il être invoqué contre l'accusé? Pourquoi? Nous protégeons la disposition statutaire actuelle qui ne prévoit aucune obligation de donner une échantillon d'urine ou de sang. Vous pouvez vous reporter au paragraphe (4) de l'article 224 du Code actuel.

M. Hogarth: Donc, ce n'est pas tellement logique.

M. Turner (Ottawa-Carleton): Mais non, au contraire, c'est parfaitement logique, parce que nous ne rendons pas obligatoire le prélèvement d'urine ou de sang. C'est pourquoi le fait de refuser de donner un échantillon d'urine ou de sang, ne devrait pas être porté contre lui.

L'article 16 du paragraphe (2) de l'article 224A est adopté.

[Text]

On Clause 16 proposed Section 224A, Subsection (3)—Evidence of failure to comply with demand where offence under s. 222 charged

Mr. Hogarth: What is an inference adverse to the accused?

The Chairman: Which section are you dealing with now?

Mr. Hogarth: Subsection (3). It says that in any proceedings under Section 222 evidence that he refused to comply with a demand when the demand was made under Section 223 is admissible and the court may draw an inference therefrom adverse to the accused. What does that mean?

Mr. Deakon: That he was guilty.

Mr. Turner (Ottawa-Carleton): What is your problem?

Mr. Hogarth: What is meant there by an inference adverse to the accused—that he is guilty?

Mr. Turner (Ottawa-Carleton): Just what it means in English, that it will not be held against him—it is not to be considered as evidence of guilt.

Wait a minute. You are down on subsection (3) now. I am sorry.

Mr. Hogarth: Yes.

Mr. Turner (Ottawa-Carleton): Well, to put it quite simply, Mr. Hogarth, what this subsection says is that a failure to take the test under Section 223 is admissible in developing a charge of impaired driving under Section 222; it is a factor that the court can consider.

Mr. Hogarth: So in an indictment where you have one count under Section 222 of impaired driving and a second count that he refused to take the test, because of the second count, his refusal to take the test, the magistrate may find him guilty under the first count?

Mr. Turner (Ottawa-Carleton): No, he just uses it as a factor in arriving at his decision.

Mr. Hogarth: Now, Mr. Minister, I take “an inference therefrom adverse to the accused”, so far as judicial proceedings are concerned, to mean a conclusion of guilt in the absence of any other evidence. So in a two-count indictment the existence of the second count

[Interpretation]

A l'article 16 le paragraphe 3 de l'article 224A du Code: Preuve du défaut d'obtempérer à la sommation lorsqu'il s'agit d'une infraction à l'article 222.

M. Hogarth: Qu'est-ce qu'une conclusion défavorable à l'accusé?

Le président: De quel article parlez-vous?

M. Hogarth: Du paragraphe (3), on lit que dans toutes procédures en vertu de l'article 222, la preuve que le prévenu ait refusé d'obtempérer à une sommation qui lui a été faite en vertu de l'article 223, est admissible et le tribunal peut en tirer une conclusion défavorable à l'accusé. Qu'est-ce que cela veut dire?

M. Deakon: Qu'il était coupable.

M. Turner (Ottawa-Carleton): Où en est la difficulté?

M. Hogarth: On entend par conclusion défavorable à l'accusé, qu'il est coupable?

M. Turner (Ottawa-Carleton): Ce que ça veut dire en anglais. Qu'on ne le retiendra pas contre lui, ce ne sera pas considéré comme preuve de culpabilité. Oh pardon, vous en êtes au paragraphe (3). Je m'excuse.

M. Hogarth: Oui.

M. Turner (Ottawa-Carleton): Disons simplement ceci, monsieur Hogarth. Le paragraphe prévoit qu'en vertu de 223, le refus de se soumettre à l'épreuve est admissible et peut entraîner une accusation de conduite pendant que la capacité de conduire est affaiblie, en vertu de 223. C'est un facteur que le tribunal peut considérer.

M. Hogarth: Bon, s'il y a un premier chef d'accusation en vertu de l'article 222, pour conduite pendant que la capacité de conduire est affaiblie, et un deuxième chef d'accusation pour refus de se soumettre à une épreuve il est possible que le juge le trouve coupable en raison du premier chef d'accusation.

M. Turner (Ottawa-Carleton): Non, ce n'est qu'un facteur qu'il utilise pour prendre sa décision.

M. Hogarth: Monsieur le ministre, des mots comme «conclusion défavorable à l'accusé», veulent dire, d'après moi, en ce qui concerne les procédures judiciaires, qu'il y a culpabilité en l'absence de toute autre preuve. Ainsi, s'il y a deux chefs d'accusation, le second

[Texte]

assists in finding him guilty on the first and then both of course are separate offences.

Mr. Turner (Ottawa-Carleton): It is on inference. It is just treated as a factor. I do not see it being conclusive, Mr. Hogarth.

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Clause 16, proposed Section 224A. Subsection (3), agreed to.

Mr. Turner (Ottawa-Carleton): He can ask that both charges be tried separately.

Clause 16, proposed Section 224A Subsection (4) agreed to.

On Clause 16—proposed Section 224A, Subsection (5)—Notice of intention to produce certificate

Mr. McCleave: I have a question.

The Chairman: On Subsection (5)?

Mr. McCleave: Yes. With regard to “reasonable notice” are there other sections of the Criminal Code where notice is spelled out rather than using this phraseology?

Mr. Turner (Ottawa-Carleton): Yes, the Canada Evidence Act as well.

Mr. Hogarth: Mr. Minister, in respect to this point, it would assist both crown and defence if that were a stated number of days. You always end up in an argument as to what is reasonable.

Mr. McCleave: I was going to suggest five days. First, however, I would like to know if there are parallels in other sections where a date had been spelled out instead of using the phrase “reasonable notice”?

Mr. Turner (Ottawa-Carleton): It is true that present Section 224, Subsection (7) requires seven days notice. The present provision here, as Mr. McCleave suggests, provides only for reasonable notice.

Now what is reasonable is left to the court, depending on the particular circumstances of the case. I am thinking particularly of the out-of-town driver. If he is caught with a statutory five days to seven days he has to stick around until the case is heard, and he may not want to stay in Timmins too long. I think you have to leave it to the discretion of the court.

The Chairman: Mr. Deakon?

Mr. Deakon: It states “given to the accused reasonable notice of his intention...” How is

[Interprétation]

permet de déclarer coupable pour la première accusation alors que ce sont deux accusations distinctes.

M. Turner (Ottawa-Carleton): Par conclusion, ce n'est qu'un facteur, mais non un facteur de décision, monsieur Hogarth.

A l'article 16 du Bill le paragraphe (3) de l'article 224A du Code est adopté.

M. Turner (Ottawa-Carleton): Il peut demander que les deux accusations soient éduiées séparément.

L'article 16 le paragraphe (4) de l'article 224A est adopté.

Sur l'article 16 le paragraphe (5) de l'article 224A—Avis de l'intention de produire le certificat ...

M. McCleave: J'ai une question à poser.

Le président: Sur le paragraphe 5?

M. McCleave: En ce qui concerne l'avis raisonnable, est-ce qu'il y a d'autres articles du Code criminel où le mot avis est précisé au lieu d'être intégré dans une phraséologie.

M. Turner (Ottawa-Carleton): Oui, la Loi sur la preuve au Canada aussi.

M. Hogarth: Monsieur le ministre, j'aimerais que pour aider les représentants de la Couronne et de la Défense, on détermine un certain nombre de jours. Vous arrivez toujours à la fin d'un agrément, à parler de choses raisonnables.

M. McCleave: Il serait bon de prévoir un délai. J'allais proposer cinq jours. Mais j'aimerais pourtant savoir avant si dans d'autres articles on a déterminé un délai au lieu d'utiliser une phraséologie.

M. Turner (Ottawa-Carleton): Actuellement, il est vrai que le paragraphe 7 de l'article 224A exige un avis de 7 jours. La disposition actuelle ne prévoit ici qu'un avis raisonnable, comme le fait remarquer monsieur McCleave. C'est au tribunal à décider ce qui est raisonnable, d'après les circonstances particulières du cas. Je pense, par exemple, au conducteur qui habite l'extérieur de la ville. Si le délai raisonnable est de 5 ou 7 jours, il faut qu'il reste jusqu'à ce que la cause soit entendue. Il n'a peut-être pas envie de rester trop longtemps à Timmins. Je pense qu'il faut s'en remettre à la discrétion du Tribunal.

Le président: Monsieur Deakon.

M. Deakon: Il est écrit «a donné au prévenu un avis raisonnable de son intention,

[Text]

this intention conveyed to the accused, verbally or in writing?

Mr. Turner (Ottawa-Carleton): I do not think reasonable notice has to be in writing—I do not think so.

Mr. Deakon: In other words, he just tells him.

Mr. Turner (Ottawa-Carleton): Not necessarily. If he gets a copy of the certificate, surely that is notice of it.

Clause 16, proposed Section 224A, Subsection (5) agreed to.

Clause 16, proposed Section 224A, Subsection (6) (a), agreed to.

On clause 16—proposed Section 224A, Subsection (6)(b)—approved container.

Mr. Peters: Could I ask whether the Minister is contemplating using the balloon as in the American system?

Mr. Turner (Ottawa-Carleton): For approved container?

Mr. Peters: Yes.

Mr. Turner (Ottawa-Carleton): The Attorney General of Canada will have to approve some container as suitable. We do not have a suitable container yet developed. What happened of course was that testimony was given to this Committee last year or the year before that there was a suitable container which has turned out to be inaccurate evidence. That is the problem that Mr. Hogarth was talking about and that is why we have to delay the proclamation.

Mr. Peters: Well, Mr. Chairman, how can you approve it when you have not decided on one.

Mr. Turner (Ottawa-Carleton): That is right. Until we find one we will not proclaim it.

Clause 16, proposed Section 224A, Subsection (6)(b), agreed to.

Mr. Chappell: Mr. Chairman, I appreciate that Subsection (3) is passed, but I have pondered Mr. Hogarth's point and I would appreciate it if you would give me the latitude to ask Mr. Scollin if I am wrong in my interpretation. It strikes me that a constable could charge a driver for failing to take the test. Let us say that he has refused. He can then say: "I will charge you under section 222". Here is an inference. He is convicted under

[Interpretation]

accompagné d'une copie du certificat. Cette intention est-elle adressée à l'accusé de vive voix ou par écrit?

M. Turner (Ottawa-Carleton): Je ne crois pas qu'un avis raisonnable doive être donné par écrit.

M. Deakon: Autrement dit, on n'a qu'à le lui dire.

M. Turner (Ottawa-Carleton): Pas nécessairement. S'il a une copie du certificat, cela tient lieu d'avis.

L'article 16, du bill, le paragraphe (5) de l'article 224A est adopté.

L'article 16, l'alinéa a) du paragraphe (6) de l'article 224A proposé est adopté.

L'article 16, l'alinéa b) du paragraphe (6) de l'article 224A—*Contenant approuvé*.

M. Peters: Puis-je poser une question? Est-ce que le ministre envisage l'utilisation d'un ballon, comme aux États-Unis?

M. Turner (Ottawa-Carleton): Pour le contenant approuvé?

M. Peters: Oui.

M. Turner (Ottawa-Carleton): Il faudra bien que le procureur du Canada approuve un contenant qui soit satisfaisant. Nous n'avons pas encore de contenant qui fasse l'affaire. Ce qui s'est passé, c'est que, l'an dernier, ou l'année précédente, on avait dit au Comité qu'il existait un bon contenant, mais il semble que ce n'était pas le cas. Voilà le problème qui évoquait tout à l'heure monsieur Hogarth. C'est pourquoi on a retardé la proclamation.

M. Peters: Monsieur le président, comment allez-vous approuver ce contenant si vous n'en avez pas encore trouvé.

M. Turner (Ottawa-Carleton): C'est juste. Tant que nous n'en trouverons pas un, nous ne pourrons le proclamer.

L'article 16, l'alinéa b) du paragraphe (6) de l'article 224A est adopté.

M. Chappell: Il est vrai que le paragraphe 3 est déjà adopté, mais j'ai réfléchi à ce que M. Hogarth a dit et, si c'était possible, j'aimerais demander à M. Scollin si mon interprétation est exacte.

Je suis frappé d'entendre qu'un agent de police pourrait accuser un chauffeur qui a refusé de se soumettre à l'épreuve. Disons qu'il n'a pas refusé. L'agent pourrait alors dire: «Je porterai une accusation contre vous,

[Texte]

Section 222, he is convicted for failing to take the test, he ends up with a second charge, he goes to jail rather than pay a fine. Now, am I wrong in my interpretation? If I am right, it bothers me.

Mr. Scollin: You are right, Mr. Chappel. An accused could be charged with impaired driving if the constable had reasonable and probable grounds to believe he was committing an offence of impaired driving.

He could require him to take a test under Section 223, and if it were then proved by the evidence that the accused was driving while impaired and that the constable had reasonable and probable grounds to believe he was driving while impaired and requested that he took a breath test which he refused, he could also be convicted under 223.

Mr. Chappell: And go to jail. That is one offence. You said a second conviction.

Mr. Scollin: No, I am sorry. The point is a second conviction; it is not a second offence because there is no provision for a second offence.

Mr. Chappell: That clears up my problem.

Mr. Hogarth: Mr. Minister, of all the clauses in the Omnibus Bill this one is going to affect more Canadians than any other clause.

The Chairman: I could not agree more.

Mr. Hogarth: I think we should be very careful with it. In the light of the previous authority that I mentioned to the Minister which points out the various defects in the various known types of breathalyzer or breath testing device, I would like to know what program the Minister proposes to embark upon before he approves any instrument.

Mr. Turner (Ottawa-Carleton): I am going to be satisfied by the advice of all the experts we can find before we finally approve a...

Mr. Hogarth: I only hope it will be better advice than that of the man who told you there was already an existing device that would contain breath...

Mr. Turner (Ottawa-Carleton): He told this Committee last year, and he was the—I will not say anymore.

Clause 16, proposed Section 244A (c) and (d) agreed to.

[Interprétation]

aux termes de l'article 222. Voilà une conclusion. Aux termes de 222, il est condamné pour refus de se soumettre à l'épreuve, et il reçoit une deuxième accusation. Il va en prison au lieu de payer une amende—Ai-je tort ou raison?

M. Scollin: Vous avez raison, monsieur Chappell. L'accusé pourrait être accusé de conduite avec capacité de conduite affaiblie, si l'agent de police a de bonnes raisons de croire qu'il était inapte à conduire.

Aux termes de l'article 223, il pourrait l'obliger à se soumettre à l'épreuve. Si l'on prouve ensuite que l'accusé était inapte à conduire et que l'agent de police avait de bonnes raisons de croire qu'il l'était, qu'il l'avait obligé de se soumettre à l'épreuve et qu'il avait refusé, il pourrait être condamné en vertu de l'article 223.

M. Chappell: Et aller en prison. Voilà une accusation. Vous avez dit deux.

M. Scollin: Non, il s'agit d'une deuxième condamnation, mais non d'une deuxième infraction car la loi ne prévoit pas une deuxième infraction.

M. Chappell: Je comprends.

M. Hogarth: Monsieur le président, de tous les articles du Bill omnibus, c'est celui qui va toucher le plus de Canadiens.

Le président: Je suis entièrement de votre avis.

M. Hogarth: Il faut donc se montrer très prudent à cet égard. À la lumière de l'expert qui a mentionné au ministre tout à l'heure, les défauts des divers types connus d'éthylomètres, d'ivressomètres, d'alcoolmètres, etc., je me demande quel programme le ministre a l'intention de lancer avant d'approuver un instrument quelconque?

M. Turner (Ottawa-Carleton): Il faudra que je consulte tous les spécialistes que je pourrai trouver avant d'approuver un instrument quelconque.

M. Hogarth: J'espère que vous recevrez de meilleurs conseils, que ceux qu'on vous a déjà donnés.

M. Turner (Ottawa-Carleton): L'an dernier, le témoin a parlé devant ce Comité.

A l'article 16, l'article 224A (c) et (d) est adopté.

[Text]

The Chairman: Gentlemen, it is ten minutes after twelve. We shall turn to Clause 17.

Mr. Hogarth: The other ones are consequential.

The Chairman: If they are not too controversial, we might be able to complete this.

On Clause 17 (1) proposed Section 225 (1)—Order prohibiting driving

Mr. Hogarth: There is only one observation I should like to make, Mr. Minister, it has been drawn to my attention that it would be of greater convenience to police forces if that were an order prohibiting from driving a motor vehicle in Canada. It would not be necessary to prove he was driving on a highway.

Mr. Turner (Ottawa-Carleton): What words are we changing there? Driving a motor vehicle in Canada?

Mr. Hogarth: Right.

Mr. Turner (Ottawa-Carleton): We will strike out the words "on the highway".

Mr. Gervais: We are getting into private property there.

Mr. Turner (Ottawa-Carleton): We forgot about the farmer. You are thinking of the big city, Mr. Hogarth. This is why we have made it an offence on the public highway.

Mr. Hogarth: That is satisfactory.

The Chairman: Mr. McCleave?

Mr. McCleave: What about the parking lots outside supermarkets or something like that? They do not fit into categories of public highways, do they?

Mr. Turner (Ottawa-Carleton): The only addition to this, Mr. McCleave, is proposed Section 224. There have been no complaints about the workings of this section.

Mr. McCleave: This is the parallel—I see.

Clause 17(1) proposed Section 225 (1) agreed to.

On Clause 17, subclause (2).

Mr. Hogarth: Mr. Minister, what is the reason for including:

or of his right to secure a permit or licence to drive

Why was that put in?

[Interpretation]

Le président: Messieurs, il est midi et dix. Nous devrions examiner l'article 17.

M. Hogarth: Les autres en découlent.

Le président: S'ils ne prêtent pas trop à controverse nous pourrions peut-être les terminer.

Sur l'article 17 (1) le paragraphe 1 de l'article 225:—*Ordonnance interdisant de conduire.*

M. Hogarth: J'ai une seule observation à faire. On m'a signalé qu'il serait plus pratique pour les agents de police s'il y avait un ordre interdisant de conduire un véhicule à moteur au Canada. On n'aurait pas à prouver qu'il conduisait sur une voie publique.

M. Turner (Ottawa-Carleton): Quels mots changeons-nous? Conduire un véhicule à moteur au Canada?

M. Hogarth: C'est juste.

M. Turner (Ottawa-Carleton): Alors, nous allons supprimer «sur une voie publique».

M. Gervais: Nous nous adressons à un domaine privé.

M. Turner (Ottawa-Carleton): Nous avons oublié le cultivateur, monsieur Hogarth. Vous pensez à la grande ville. C'est pourquoi nous parlons d'une infraction sur une voie publique.

M. Hogarth: Parfait.

Le président: Monsieur McCleave?

M. McCleave: Qu'arrive-t-il des parcs de stationnement en dehors des centres commerciaux ou quelque chose du genre? Est-ce qu'ils entrent dans la catégorie des voies publiques?

M. Turner (Ottawa-Carleton): La seule différence, c'est que nous proposons d'ajouter l'article 224. Personne ne s'est jamais plaint du texte de cet article.

M. McCleave: Je vois.

A l'article 17(1), le paragraphe 1 de l'article 225 est adopté.

Sur l'article 17(1), le paragraphe 2 de l'article 225.

M. Hogarth: Monsieur le ministre, pour quelle raison incluons-nous:

«ou de son droit d'obtenir un permis ou une licence»

Pourquoi?

[Texte]

Mr. Turner (Ottawa-Carleton): Suppose the licence had expired.

Mr. Hogarth: Yes.

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Mr. Turner (Ottawa-Carleton): That is the...

Mr. Hogarth: The order that is being offended is that he is driving a motor vehicle on a highway in Canada when he is prohibited by virtue of an order made pursuant to the Code from so doing.

Mr. Turner (Ottawa-Carleton): This covers a gap in a situation where the licence has expired.

Mr. Scollin: The period of legal suspension or cancellation of an actual licence. There is one situation where you have a driver with a licence whose licence is suspended or cancelled. You may also have very serious situations of a chap who has never bothered to get a licence. All they can cancel or prevent him from having is his right to secure a permit or licence. He may be in exactly the same situation and just as much of a menace on the roadway and ought not to be driving.

Also, in a case where the permit period, say a two-year period or a one-year period has already expired, the licence has been cancelled and then the period for which that licence would have been valid has expired, all that remains is the deprivation of his right to get a permit or licence. So long as that remains in force, he ought not to be driving. He is in exactly the same situation as the chap whose licence is suspended or cancelled.

Mr. Hogarth: I appreciate that. Your suggestion is that this creates it an offence to drive a motor vehicle while you do not have a provincial driver's licence or your right to have one has been suspended or cancelled by the provincial authority.

Mr. Scollin: Yes.

Mr. Hogarth: I see. You extend that now to where your right to secure one has been suspended by provincial authority?

Mr. Scollin: Yes.

Mr. Hogarth: It has nothing to do with the prohibition order previously mentioned?

Mr. Scollin: No, nothing to do with the prohibition order at all.

Clause 17, subclause (2) agreed to.

[Interprétation]

M. Turner (Ottawa-Carleton): Supposons que le permis de conduire est expiré...

M. Hogarth: ... Oui ...

M. Turner (Ottawa-Carleton): Eh bien,...

M. Hogarth: L'infraction, c'est qu'il conduit un véhicule à moteur sur une voie publique au Canada, alors qu'il n'a pas le droit de le faire à cause d'une ordonnance, aux termes du Code.

M. Turner (Ottawa-Carleton): Si la période de validité du permis est expirée.

M. Scollin: La période de suspension ou d'annulation légale de sa licence. Il y a des situations où un chauffeur a une licence qui a été suspendue ou résignée. Il peut aussi y avoir des cas très graves où un type ne s'est jamais préoccupé de se procurer une licence. Tout ce qu'ils peuvent suspendre ou lui interdire, c'est son droit d'obtenir un permis ou une licence. Il se retrouverait donc dans la même situation, représenterait autant de danger sur la voie publique et ne devrait pas conduire. Dans le cas où la période de permis, disons une période de deux ans ou d'un an, est déjà expirée, la licence a été annulée et la période où la licence aurait été valide a expiré; alors tout ce qui reste, c'est la privation de son droit d'obtenir un permis ou une licence. Aussi longtemps que cet article est en vigueur, il ne devrait pas conduire. Il est dans la même situation que le type dont la licence a été suspendue ou annulée.

M. Hogarth: Je comprends, mais, en somme, vous dites que c'est un délit de conduire un véhicule à moteur si on n'a pas de permis de conduire provincial ou si votre droit d'en avoir un a été suspendu ou annulé par l'administration provinciale.

M. Scollin: Oui.

M. Hogarth: Je vois. Et vous demandez jusqu'où votre droit d'en obtenir un a été suspendu par l'organisme provincial compétent.

M. Scollin: ... Oui ...

M. Hogarth: ... Ca n'a rien à voir avec l'ordonnance d'interdiction susmentionnée...

M. Scollin: Non.

A l'article 17, le paragraphe 2 de l'article 225 est adopté.

[Text]

Clause 17, subclause (3) agreed to.

The Chairman: We are so close to the abortion clauses that perhaps we could wrap those up too. I think what we should do if the Committee agrees is to skip Clause 18 on abortion and come to Clause 19 on master keys. That should not be too difficult. Master keys, coin-operated devices, theft.

Mr. Turner (Ottawa-Carleton): If it is convenient to the Committee we would be agreeable to starting with Clause 19 and going through these other clauses of less controversy this afternoon. We would like to clear up that firearms situation raised by Mr. Hogarth on the onus of proof. We would like to clean up the drafting problem that arose on the certificate this morning. We could do that fairly quickly, and then if it is agreeable to the Committee go on to Clause 19 and proceed to master keys and telephone harassment.

The Chairman: Telephone harassment. And the protection of animals, too.

We will adjourn until 3.30 p.m.

AFTERNOON SITTING

• 1541

The Chairman: Gentlemen, we have a quorum.

If you will go back to page 23 to the section dealing with firearms, there will be an amendment before the Committee proposed by Mr. Hogarth.

Mr. Hogarth: Mr. Chairman, you will recall that when we were dealing with firearms I expressed a great deal of concern that the present Section 92 of the Criminal Code which put the burden of proof upon the accused to establish that he was the holder of a permit or registration certificate had been deleted in the new provisions which we now propose. The Minister intimated he would take that suggestion under consideration and I understand that he has now, more or less, agreed with me that that section should perhaps go back in. Accordingly, I would like to move:

That Bill C-150 be amended by striking out lines 18 to 25 on page 23 and substituting the following:

Onus of proof as to holder of permit, etc.

[Interpretation]

A l'article 17 le paragraphe 3 de l'article 225 est adopté.

Le président: Nous sommes déjà presque arrivés aux articles sur l'avortement. Nous pourrions peut-être tout terminer?

Si le Comité n'y voit pas d'inconvénient, nous pourrions sauter l'article 18 sur l'avortement pour en venir à l'article 19 sur les passe-partout. Ce ne devrait pas présenter de difficultés. Les passe-partout, les instruments pour forcer un appareil à sous, le vol.

M. Turner (Ottawa-Carleton): Si ça convient au Comité, nous serions d'accord pour commencer l'étude de l'article 19 et pour examiner cet après-midi, les autres articles qui prêtent moins à controverse. Cet après-midi nous aimerions tirer au clair la question des armes à feu, soulevée par M. Hogarth au sujet de la charge de la preuve. Nous aimerions aussi terminer le problème de rédaction qui a été soulevé ce matin au sujet du certificat. Nous pourrions le faire assez vite et ensuite passer à l'article 19, aux questions de passe-partout et des appels téléphoniques ennuyeux.

Le président: Les appels téléphoniques ennuyeux et aussi la protection des animaux.

Nous allons ajourner jusqu'à 15 heures trente.

SÉANCE DE L'APRÈS-MIDI

Le président: Messieurs, nous avons quorum. Revenons à la page 23, à l'article traitant des armes à feu. Il y a un amendement à présenter qui a été proposé par M. Hogarth.

M. Hogarth: Monsieur le président, vous vous souvenez que lorsque nous avons étudié les armes à feu j'ai laissé entendre mon inquiétude que l'article 92 du code criminel au sujet du fardeau d'une preuve sur l'accusé qui doit établir qui était le détenteur d'un permis ou d'un certificat d'enregistrement que cet article a été supprimé dans les dispositions que nous proposons. Le ministre tiendra compte de la proposition, mais je pense qu'il est plus ou moins d'accord avec moi que cet article devrait être réintroduit dans le bill. Par conséquent, je proposerais:

Que le bill C-150 soit modifié par le retranchement des lignes 20 à 29, page 23, et leur remplacement par ce qui suit:

Fardeau de la preuve quant au détenteur de permis, etc.

[Texte]

98H. (1) Where, in any proceedings under any of sections 83 to 98F, any question arises as to whether a person is or was the holder of a permit or registration certificate, the onus is on the accused to prove that that person is or was the holder of such permit or registration certificate.

Permit, etc. as evidence

(2) In any proceedings under any of sections 83 to 98F, a document purporting to be a permit or registration certificate is evidence of the statements contained therein without proof of the signature or the official character of the person appearing to have signed the same.

I would read it in French, Mr. Chairman, except that it would set back bilingualism a good 75 years, so I will ask J.-C. Cantin to read it.

An Hon. Member: Do not be so modest.

M. Cantin donne lecture de l'amendement en français.

Mr. Turner (Ottawa-Carleton): We have not changed our attitude at all concerning the need for this particular amendment. We do not think it either adds to or subtracts from the Bill, but perhaps it is a useful clarification and is a reinstatement of the principle of present Article 92 of the Code. We see no reason for opposing it, Mr. Chairman.

Clause 6, proposed Section 98H as amended, agreed to.

The Chairman: We have another amendment before the Committee. This is in relation to the breathalyzer which can be found on page 39.

Mr. Hogarth: Mr. Chairman, the remarks that I make this morning with respect to the provision of (A) at line 16 on page 39 were somewhat inconsistent with the provisions of (1), line 34, at the bottom of page 37, where in the one instance the person taking the sample had to offer to provide the accused a specimen of his breath and the certificate said that the accused was to request a specimen of his breath. An amendment has been drafted to clear up the inconsistency between these two sections. I am moving this on the basis of the Minister's undertaking with respect to the

[Interprétation]

«98H. (1) Lorsque, dans toutes procédures en vertu de l'un des articles 83 à 98F, se pose la question de savoir si une personne est ou a été le détenteur d'un permis ou d'un certificat d'enregistrement, il incombe à l'accusé de prouver que cette personne est ou était le détenteur de ce permis ou de ce certificat d'enregistrement.

Permis, etc., en tant que preuve.

(2) Dans toutes procédures en vertu de l'un des articles 83 à 98F, un document donné comme étant un permis ou un certificat d'enregistrement fait preuve des déclarations contenues dans le document sans qu'il soit nécessaire de faire la preuve de la signature de la personne par laquelle il paraît avoir été signé ni de la qualité officielle de cette personne.

Je lirais ce texte en français, monsieur le président, mais on risquerait d'entendre un français d'il y a plus de 75 ans. Je demanderai à M. J. C. Cantin de vous le lire.

Une voix: Ne soyez pas aussi modeste.

Mr. Cantin reads the amendment in French.

M. Turner (Ottawa-Carleton): Nous n'avons pas du tout changé notre attitude en ce qui concerne la nécessité de cet amendement en particulier. Toutefois, nous ne pensons pas qu'il ajoute ou qu'il enlève quoi que ce soit du projet de loi, mais c'est essentiellement une précision utile et un rétablissement du principe à la base de l'article 92 du Code criminel. Nous ne voyons pas d'inconvénient à l'accepter, monsieur le président.

L'article 6, relatif à l'article 98H modifié, est adopté.

Le président: Il y a encore un autre amendement devant le Comité en ce qui concerne l'ivressomètre que l'on peut trouver à la page 39.

M. Hogarth: Monsieur le président, les observations qui ont été faites ce matin, en ce qui concerne les dispositions (A), ligne 16 du texte anglais, page 39, ne me paraissent pas très logiques comparées aux dispositions de la page 37, ligne 34 (i), au bas de la page 37. Dans un cas, la personne faisant l'infraction devrait offrir l'échantillon de son haleine à l'accusé, alors que le certificat précisait que l'accusé devait demander cet échantillon de son haleine. Un amendement est fait pour dissiper les contradictions dans ces deux articles. Je le propose sous réserve évidemment

[Text]

promulgation of the section in any event. Therefore, I move:

That Bill C-150 be amended by striking out lines 16 to 20 on page 39 and substituting the following:

(A) that at the time the sample was taken he offered to provide to the accused a specimen of the breath of the accused in an approved container for his own use and, at the request of the accused made at that time, such a specimen was thereupon provided to him,

I will ask Mr. Cantin to read this one in French also.

M. Cantin donne lecture de l'amendement en français.

Mr. Turner (Ottawa-Carleton): Thank you. I think Mr. Hogarth made a very useful suggestion and we certainly accept it.

The Chairman: All in favour of the amendment?

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Mr. McQuaid: Mr. Chairman, before you pass this, I wonder if I could ask a question? Why does this have to be at the request of the accused.

We know, of course, technically speaking, that everyone is presumed to know what the law is. I am afraid there would be a great many accused who would not know that they have the right and that they have to ask for this sample to be made available to them. Why cannot it be offered to them, without their having to ask for it?

Mr. Turner (Ottawa-Carleton): That is the point, Mr. McQuaid. It is offered under 224A, on page 37, subsection (1) (c) (i).

Mr. McQuaid: Yes.

Mr. Turner (Ottawa-Carleton): It says:

(i) at the time the sample was taken, the person taking the sample offered to provide...

Mr. McQuaid: Yes, but then the accused has to ask.

Mr. Turner (Ottawa-Carleton): No, as I understand it, it is offered.

Mr. McQuaid: Well, what is the significance of the last few lines? It says:

... in an approved container for his own use, and, at the request of the accused made at that time, such a specimen was thereupon provided to him,

[Interpretation]

de ce que nous a dit le ministre en ce qui concerne la promulgation ultérieure des articles.

Je propose

que le bill C-150 soit modifié par le retranchement des lignes 16 à 23, page 39, et leur remplacement par ce qui suit:

«(A) qu'au moment où l'échantillon a été prélevé, il a offert de fournir au prévenu, pour son propre usage, un spécimen de l'haleine du prévenu, dans un contenant approuvé, et que, à la requête du prévenu faite à ce moment-là, un tel spécimen lui a été alors fourni.»

Je demande à M. Cantin de nous lire aussi le texte français.

Mr. Cantin reads the amendment in French.

M. Turner (Ottawa-Carleton): C'est une excellente idée, M. Hogarth, que nous accepterons certainement.

Le président: Tous ceux qui sont pour?

M. McQuaid: Est-ce que je peux poser une question avant de voter. Pourquoi est-il indispensable que l'accusé fasse la demande? Nous savons évidemment que, théoriquement, tout le monde est censé connaître la loi. Mais il y aura beaucoup de prévenus qui ne sauront pas qu'ils ont le droit et qu'ils doivent demander cet échantillon. Pourquoi est-ce qu'on ne pourra pas leur offrir sans devoir leur demander.

M. Turner (Ottawa-Carleton): Voilà précisément le point, M. McQuaid. Mais aux termes de 224A, page 37, paragraphe (1)(c)(i).

M. McQuaid: Oui.

M. Turner (Ottawa-Carleton): Le paragraphe dit:

(i) ... au moment où l'échantillon a été prélevé, la personne qui le prélevait a offert de fournir au prévenu...

M. McQuaid: Oui, il faut que le prévenu demande.

M. Turner (Ottawa-Carleton): Si j'ai bien compris, c'est offert.

M. McQuaid: Mais qu'est-ce qu'on entend par

dans un contenant approuvé, et si, à la requête du prévenu faite à ce moment-là, un tel spécimen lui a été alors fourni»

[Texte]

Why should he have to ask to have the specimen provided to him?

Mr. Turner (Ottawa-Carleton): Well, the request is the acceptance of the offer. The offer is made and then at the request of the accused, it is given over to him. It is an offer and acceptance situation. The purpose of Mr. Hogarth's amendment is to make sure that the words "offer" and "request" are reflected back in the certificate, but the offering is compulsory.

Mr. McQuaid: I realize that, but I am afraid the sample does not have to be provided to the accused unless he asks for it.

Mr. Turner (Ottawa-Carleton): Unless he accepts the offer; he does not have to accept it.

Mr. MacEwan: Why does it not say "acceptance", then, instead of "request?"

Mr. Turner (Ottawa-Carleton): It says:

... at the request of the accused made at that time, such a specimen was thereupon provided to him,

Mr. MacEwan, it reads that the person who takes the test has to offer him a sample. The accused does not have to take it, but if he wants it, at his request he can have it.

Mr. McQuaid: No, but that is not what it says, Mr. Turner. As I interpret the section, the person who is taking the sample says to the accused, "You can have a sample of this." But then further on, that sample is not to be provided to him unless he specifically asks for it.

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Mr. Turner (Ottawa-Carleton): That is right. He may not want it.

Mr. MacEwan: If the offer is not accepted, I can see that, but a request just does not add up. That seems to imply that the accused must fake the request originally.

The Chairman: Mr. Hogarth perhaps you would speak to this amendment.

Mr. Hogarth: Subsection (c) on page 37 sets forth the contingencies upon which the evidence becomes admissible. The first contingency is that the analyst or the person taking the sample offered to provide to the accused a sample of his breath and that at the request of the accused such sample was given to him. This is the first contingency that makes the evidence admissible.

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[Interprétation]

Pourquoi devrait-il demander qu'on lui fournisse le spécimen?

M. Turner (Ottawa-Carleton): La demande est l'acceptation de l'offre. L'offre est faite et alors à la demande de l'accusé on le lui donne. Il s'agit d'une offre et d'une acceptation.

Le but de l'amendement de M. Hogarth est de s'assurer que les mots «offre» et «demande» figurent au certificat, mais l'offre est obligatoire.

M. McQuaid: Sans doute, mais je crains qu'il ne soit pas indispensable de fournir l'échantillon au prévenu à moins qu'il le demande.

M. Turner: A moins qu'il l'accepte, mais il n'a pas besoin de l'accepter.

M. MacEwan: Pourquoi ne dit-on pas «acceptation» au lieu de «demande»?

M. Turner (Ottawa-Carleton): Il est dit:

A la requête du prévenu faite à ce moment-là, un tel spécimen lui a été alors fourni.

Autrement dit, monsieur MacEwan, la personne qui prélève l'échantillon doit offrir un échantillon au prévenu. Le prévenu n'a pas besoin de l'accepter, mais, à sa demande, il peut l'obtenir.

M. McQuaid: Ce n'est pas ce qu'il dit, M. Turner. Si j'ai bien interprété l'article, la personne qui prélève l'échantillon dit au prévenu: «Vous pouvez en avoir un échantillon.» Après quoi, l'échantillon ne lui est pas fourni à moins qu'il ne le demande.

M. Turner (Ottawa-Carleton): C'est exact. Il ne le voudra peut-être pas.

M. MacEwan: Si l'offre n'est pas agréée, je comprends, mais une demande fausse semble impliquer que l'accusé doit truquer la demande au départ.

Le président: Monsieur Hogarth pourrait peut-être s'expliquer.

M. Hogarth: A la page 37, le paragraphe (c) indique les circonstances dans lesquelles la preuve peut être admissible. La première circonstance, c'est que l'analyste ou la personne prélevant l'échantillon a offert de fournir au prévenu, pour son propre usage, un spécimen de son haleine et qu'à la requête du prévenu faite à ce moment-là, un tel échantillon lui a été fourni. Voilà la première circonstance qui

[Text]

We are endeavoring under the latter section to substantiate by certificate whether that offer was made and whether the accused was so provided with a sample. In the initial instance as the bill now stands, it merely read that the accused requested a sample of his breath. It did not put forth the whole contingency that an offer had to be made to him, you see.

Mr. Turner (Ottawa-Carleton): The offer is being compulsory before he . . .

Mr. Hogarth: Before the certificate could be admissible.

Mr. Turner (Ottawa-Carleton): The offer is a condition precedent to the admissibility of the evidence.

Mr. McQuaid: It seems to be all right now.

The Chairman: Gentlemen, shall proposed section 224A (1) (f) (iii) carry? Mr. Deakon?

Mr. Deakon: If we did pass this amendment that my learned friend proposes, it would eliminate one of the defences the accused may have as to the wording of the certificate—as to the certificate being allowed in as evidence. The way it is now, the accused can dispute this certificate being put in as evidence by saying he was not offered a sample. But if you put in this amendment, that takes away any defence the accused may have in that regard.

Mr. Turner (Ottawa-Carleton): He can always get in the box and say that.

Mr. Deakon: He can call the man and prove in cross-examination that he was not offered it.

Mr. Turner (Ottawa-Carleton): He can always get in the box and say that. As I understand it, the purpose of Mr. Hogarth's amendment was to make sure that the certificate reflected the substance of the law.

Mr. Hogarth: Exactly.

Clause 16, proposed Section 224A as amended agreed to.

On Clause 19, proposed Section 225A—Possession of instruments for breaking into coin-operated device.

The Chairman: Perhaps the Minister would like to give an explanation?

Mr. Turner: The purpose of this new section is to make possession of instruments for

[Interpretation]

rend la preuve admissible. Nous tâchons un peu plus loin de prouver par un certificat que l'offre a été faite et que le prévenu a reçu l'échantillon. A l'origine, on dit à peine, dans le projet de loi actuel, que l'accusé avait demandé un échantillon de son haleine. Cela n'expliquait pas tout le contexte qu'il fallait que l'offre lui soit faite.

M. Turner (Ottawa-Carleton): Cette offre étant obligatoire avant que . . .

M. Hogarth: Avant que le certificat puisse être admissible.

M. Turner (Ottawa-Carleton): Il s'agit d'une circonstance qui rend la preuve admissible.

M. McQuaid: Tout semble très clair maintenant.

Le président: Messieurs, le sous alinéa (iii) de l'alinéa F du paragraphe (1) de l'article 224A est-il adopté? Monsieur Deakon?

M. Deakon: Si nous avons accepté la modification proposée par l'honorable député, cela éliminerait une des dépenses que l'accusé aurait au sujet du texte du certificat, le certificat pouvant servir de preuve. Tandis que maintenant quelqu'un peut être accusé et nier le certificat en disant qu'on ne lui a pas donné l'échantillon et cela élimine tout délit.

M. Turner (Ottawa-Carleton): Il peut toujours se rendre à la barre et le dire.

M. Deakon: Il peut citer l'analyste et prouver que celui-ci ne le lui a pas offert.

M. Turner (Ottawa-Carleton): Il peut toujours se rendre à la barre et le dire; si j'ai bien compris, la proposition de monsieur Hogarth a pour but de s'assurer que le certificat reflétait bien l'essence de la loi.

M. Hogarth: Précisément.

A l'article 16, l'article 224A modifié est adopté.

A l'article 19, l'article proposé 295A—Possession d'instruments pour forcer un appareil à sous.

Le président: Le ministre voudrait peut-être donner une explication?

M. Turner (Ottawa-Carleton): Ce nouvel article a pour but de qualifier d'acte criminel

[Texte]

breaking into a coin-operated device an indictable offence.

Clause 19, proposed Section 225A agreed to.

Clause 19, proposed Section 295B (1) agreed to.

Clause 19, proposed Section 295B (2) agreed to.

Clause 19, proposed Section 295B (3) (a) and (b) agreed to.

Clause 19, proposed Section 295B (4) agreed to.

On Clause 19, proposed Section 295B (5)—“Automobile master key”.

Mr. Hogarth: Mr. Minister, what is considered to be “locks of a series of motor vehicles”?

Mr. Turner (Ottawa-Carleton): There are certain crown prosecutors who object to the word “series”. They are contending that it could be narrowly interpreted to mean vehicles of the same name or vehicles manufactured by the same company. We believe that this interpretation is unduly restrictive, having in mind the object of the section. We do not believe there is any problem here.

The security equipment section of the RCMP thought the definition was workable. They sought to make the definition more

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workable, but have been unable to do so. This is the best definition we were able to come up with.

Clause 19, proposed Section 295B (5) agreed to.

Clause 19 agreed to.

On Clause 20, proposed Section 298 (1)—Theft from mail.

Mr. Turner (Ottawa-Carleton): This is a new section. This substitutes a new section for Subsection 298 (1). The effect is to remove the minimum sentence of six months from theft from the mails. We are gradually removing minimum sentences from the Criminal Code. This is on the recommendation of the Postmaster General.

The Chairman: Shall Clause 20 carry?

Mr. Gilbert: Mr. Chairman, with regard to that particular section, in the ordinary theft section you have the distinction between theft over \$50 and theft under \$50, and for the theft under \$50 you have a lesser maximum

[Interprétation]

le fait d'avoir en sa possession un instrument pour forcer un appareil à sous.

A l'article 19, l'article 295a est adopté.

A l'article 19, le paragraphe 1 de l'article 295B est adopté.

A l'article 19, le paragraphe 2 de l'article 295B est adopté.

A l'article 19, les alinéas a) et b) du paragraphe 3 de l'article 295B sont adoptés.

A l'article 19, le paragraphe 4 de l'article 295B est adopté.

A l'article 19, le paragraphe 5 de l'article 295B—«Passe-partout d'automobile»

M. Hogarth: Monsieur le ministre, qu'entend-t-on par «serrures d'une série de véhicules à moteur».

M. Turner (Ottawa-Carleton): Certains avocats de la Couronne s'opposent au mot «série». D'après eux cela pourrait être interprété de façon étroite et vouloir dire des véhicules de marque identique ou fabriqués par la même compagnie. Nous pensons que cette interprétation est par trop limitée si nous tenons compte du but de cet article. Nous ne croyons pas que cela crée des problèmes. La section de l'équipement de sécurité de la Gendarmerie royale a pensé que la définition convenait. Ils ont essayé de l'améliorer, mais ils

n'ont pu réussir. C'est la meilleure définition que nous ayons pu trouver.

A l'article 19, le paragraphe 5 de l'article 295B est adopté.

L'article 19 est adopté.

A l'article 20, le paragraphe 1 de l'article 298: *Vol de courrier*.

M. Turner (Ottawa-Carleton): C'est un nouvel article qui remplace le paragraphe 1 de l'article 298. Il a pour effet de supprimer la sentence minimum de six mois pour le vol du courrier. Nous éliminons graduellement les sentences minimums du Code criminel. C'est une proposition du ministre des Postes.

Le président: L'article 20 est-il adopté?

M. Gilbert: A ce sujet, dans l'article qui a trait au vol, ordinaire, on fait la distinction entre le vol pour plus de \$50. ou pour moins. Je crois que la peine est de deux ans de prison tandis que la peine maximum pour le

[Text]

sentence—I think it is two years—whereas the maximum for theft as an indictable offence is ten years, over ten years. Now, I notice here that you have theft from mails as:

...an indictable offence and is liable to imprisonment for ten years.

Has any consideration been given to theft under \$50 and theft over \$50? It seems to be quite harsh.

Mr. Turner (Ottawa-Carleton): Well, let us put it this way. The Department of Justice has always considered that theft from the mails was a particularly serious offence. You can never value the amount. You can never predict the amount stolen in an envelope or a package, so that the flexibility in terms of the maximum is retained. One cannot anticipate what amount can be stolen from the mails, and as a result it has always been treated, Mr. Gilbert, I understand, as a special case.

Clause 20, proposed Section 298 (1) agreed to.

Clause 21 agreed to.

On Clause 22—Harassing telephone calls.

Mr. Chappell: May I ask a question on the proposed subsection (3) in clause 22? I am wondering the reason for the selection of the words “repeated telephone calls” which probably would take it up to four or five or more. Why would not two be enough? Also, what is your thinking about not trying to cover a single offensive call? Is it a matter of proof? Or what is the thinking?

Mr. Turner (Ottawa-Carleton): Well, this is deliberate policy decision, Mr. Chappell. One call is not sufficient. It is a course of conduct, harassment, that is the essential ingredient in this offence, the repeated harassing telephone call. As to the word “repeated”, I do not know how we can clarify that.

I want to make sure that we understand that you need only one indecent call, and that is a different offence. That is found under the second subsection of the section to which we are adding. Section 315 (2) now reads:

Every one who, with intent to alarm or annoy any person, makes any indecent telephone call to such person is guilty of an offence punishable on summary conviction.

One call. This new subsection is not to get at the indecent call, which is already covered.

[Interpretation]

vol peut aller jusqu'à dix ans. Or, je remarque ici que le vol du courrier est

un acte criminel et est passible d'un emprisonnement de dix ans.

A t-on songé à la différence entre plus de \$50 et moins de \$50. Cette mesure semble très dure.

M. Turner (Ottawa-Carleton): Le ministère de la Justice a toujours considéré que le vol du courrier est un délit très grave. Vous ne pouvez en estimer la valeur. On ne peut pas dire quel montant a été volé dans une enveloppe ou un paquet et c'est pourquoi le facteur maximal ne joue plus. On ne peut prévoir la somme qui peut être volée dans le courrier et par conséquent, monsieur Gilbert, la question a été traitée comme un cas spécial.

L'article 20, le paragraphe 1 de l'article 298 est adopté.

L'article 21 du bill est adopté.

A l'article 22, Appels téléphoniques harassants.

M. Chappell: Je voudrais poser une question au sujet du paragraphe 3 de l'article 22. Je me demande pourquoi on choisit les mots «appels téléphoniques répétés»; en faut-il quatre ou cinq ou plus. Je me demande si deux ne suffiraient pas et pourquoi on ne tient pas compte du délit unique. Est-ce une question de preuve ou quelle en est la raison?

M. Turner (Ottawa-Carleton): C'est une décision que nous avons prise, monsieur Chappell, un appel ne suffit pas. Il s'agit d'harasser quelqu'un, et par conséquent la répétition d'une suite, et donc la quantité est un élément essentiel de cette infraction. Il s'agit «d'appels téléphoniques répétés» qui sont harassants. Je ne sais pas comment on peut expliquer le mot «harassant».

Je veux pourtant m'assurer que vous compreniez qu'il ne faut qu'un seul appel indécent, mais c'est une infraction différente qu'on retrouve dans l'autre paragraphe de l'article que nous ajoutons. Le paragraphe 2 de l'article 315 stipule que:

Quiconque, avec l'intention d'alarmer ou d'ennuyer des personnes, fait un appel téléphonique indécent à ces personnes est coupable d'une infraction passible d'une condamnation sommaire.

Un seul appel. Ce nouveau paragraphe ne s'adresse pas aux appels indécents qui sont

[Texte]

This is to get at a continued conduct of harassment.

Mr. Chappell: My question was directed to the use of the word "repeated", whether it is two or would the interpretation likely be half a dozen?

Mr. Turner (Ottawa-Carleton): That will be up to the courts.

Mr. Chappell: Well, if it is as wide open as that might it not be better to put a number in? Two or more? Three or more? But if you put in three or more it seems to invite them to make two.

Mr. Turner (Ottawa-Carleton): It is a question of when harassment begins. I do not know how you. . .

Mr. Murphy: Mr. Chairman, I would like to ask the Minister if there is not a possibility that this clause might be invoked to prevent calls, which are no doubt harassing, from

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creditors. There is nothing in the section to prevent it, unless you want to put in "without lawful excuse".

Mr. Turner (Ottawa-Carleton): Let us read it again.

Mr. Murphy: Intent to harass.

Mr. Turner (Ottawa-Carleton): Intent to harass, not intent to collect money. Harass has an element of unjustifiability to it. A man who phones you to collect money has a justifiable reason, namely that he is trying to collect some money.

Mr. Murphy: But he is harassing you, and there is nothing in here. . .

Mr. Turner (Ottawa-Carleton): He has a justification.

Mr. Murphy: But is it not made absolute here? This is what I am getting at. I am not thinking of the man to whom one owes the money. I am thinking of the collection agency, who will call day in and day out in some cases, with the intention of harassment.

Mr. Turner (Ottawa-Carleton): I think we are going to have to leave that to the courts. I think it assumes lack of justification.

Mr. Murphy: You do not think that there should be something put in, such as "without legal justification"?

[Interprétation]

déjà réglémentés, mais ici il s'agit d'harassement causé par plusieurs appels téléphoniques répétés.

M. Chappell: Je me demande pourquoi on utilise le mot «répétés», en faut-il deux ou est-ce que l'interprétation s'étend jusqu'à six appels téléphoniques?

M. Turner (Ottawa-Carleton): C'est au tribunal d'en décider.

M. Chappell: Eh bien, si c'est aussi vague que ça, ne serait-il pas mieux de fixer un chiffre, deux ou plus? Messieurs, si on écrit trois ou plus, eh bien, ils en feront deux.

M. Turner (Ottawa-Carleton): Eh bien, il faut savoir quand le harcèlement commence; je ne sais vraiment pas.

M. Murphy: Je voudrais poser une question au ministre. Ne serait-il possible que d'invoquer cet article pour empêcher des appels assurément harassants, les appels de créan-

ciers. Rien dans cette disposition ne l'interdit. Vous pourriez peut-être mettre sans excuse valable.

M. Turner (Ottawa-Carleton): Relisons l'ensemble.

M. Murphy: «Avec l'intention d'harasser».

M. Turner (Ottawa-Carleton): Avec l'intention d'harasser et non pas de l'intention de percevoir de l'argent qu'on vous doit. Harassement implique quelque chose qui n'est pas justifiable, quelqu'un qui vous téléphone pour percevoir de l'argent a une raison de téléphoner, il essaie de recouvrer son dû.

M. Murphy: Cependant il vous harcasse et il n'y a rien ici. . .

M. Turner (Ottawa-Carleton): Mais il a une raison.

M. Murphy: Ce n'est pas absolu ici. C'est là où je veux en venir. Je ne pense pas à celui à qui vous devez de l'argent, je pense à l'agence de recouvrement qui va vous appeler jour après jour dans certains cas, avec l'intention de vous harasser.

M. Turner (Ottawa-Carleton): Je pense qu'il va falloir s'en remettre aux tribunaux, je pense que cela laisse supposer un manque de justification.

M. Murphy: Vous ne pensez pas que l'on devrait mettre ici quelque chose comme «sans raison légale»?

[Text]

Mr. Turner (Ottawa-Carleton): I do not know what you want us to do. Put in some exceptions?

Mr. Murphy: No, anyone who without lawful excuse and with intent to harass any person makes or causes to be made repeated telephone calls.

Mr. Turner (Ottawa-Carleton): Let me read you the Interpretation Act, Mr. Murphy, at Section 11.

Every enactment shall be deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best insures the attainment of its objects.

The Chairman: Shall Clause 22 carry?

Mr. Murphy: I know this sounds funny but...

The Chairman: Mr. MacEwan?

Mr. MacEwan: Go ahead, Mr. Murphy.

Mr. Murphy: You are harassed by one call. I think it sounds ridiculous...

Mr. Turner (Ottawa-Carleton): All right, let us add without lawful justification and with intent.

Mr. Hogarth: Mr. Chairman, I just want to add that it was the finance company I thought we were getting at here.

Mr. Turner (Ottawa-Carleton): How would that go? Without lawful excuse and with intent to harass?

Mr. Murphy: I move that Clause 22 be amended as follows:

that Bill C-150 be amended by striking out lines 27 and 28 on page 46 and substituting the following:

"(3) Every one who, without lawful excuse and with intent to harass any person, makes or causes to"

Clause 22 as amended agreed to.

Mr. MacEwan: Mr. Chairman, I wanted to ask some questions that are not on the amendment. May I ask the Minister or the officials of the Crown what evidence is normally acceptable? I am not aware of there having been too many prosecutions, either, under the old Section 315(1) (2). What evidence would be necessary under this new amendment?

Mr. Christie: Often the person who is receiving the telephone calls will know who is

[Interpretation]

M. Turner (Ottawa-Carleton): Qu'est-ce que vous voulez que nous fassions? Que nous prévoyions des exceptions?

M. Murphy: Non, mais on pourrait dire: «quiconque, sans raison légale et avec l'intention d'harasser se livre à des appels répétés.»

M. Turner (Ottawa-Carleton): Laissez-moi lire la *Loi sur l'interprétation*, à l'article 11:

Chaque texte législatif est censé réparateur et doit s'interpréter de la façon juste, large et libérale la plus propre à assurer la réalisation de ses objets.

Le président: L'article 22 est-il adopté?

M. Murphy: Je sais que cela a l'air drôle, mais...

Le président: Monsieur MacEwan?

M. MacEwan: Allez-y, monsieur Murphy.

M. Murphy: Vous êtes harassé par quelqu'un. Ça a l'air ridicule mais...

M. Turner (Ottawa-Carleton): Parfait, ajoutons sans excuse légale et avec intention.

M. Hogarth: Monsieur le président, je voulais seulement ajouter que je visais essentiellement les compagnies de prêts.

M. Turner (Ottawa-Carleton): Qu'est-ce que vous voulez mettre ici? Est-ce que cela vous irait si on disait par exemple: «sans excuse légale et avec l'intention de harasser quelqu'un»?

M. Murphy: Je propose que l'article 22 soit amendé comme suit:

Que le Bill C-150 soit amendé en rayant les lignes 28 et 29 page 46 et en substituant:

«culpabilité, quiconque, sans excuse légale et avec l'intention de harasser quelqu'un,...

L'article 22 amendé, est adopté.

M. MacEwan: Monsieur le président, j'aimerais poser quelques questions qui ne figurent pas dans les amendements. J'aimerais demander au Ministre ou aux fonctionnaires de la Couronne quel genre de preuves peut-on invoquer ici? Je ne sais même pas s'il y a eu trop de poursuites en vertu de l'article 315 (1) et (2) de l'ancienne Loi. En vertu de ce nouvel amendement, quel genre de preuves devrait-on produire?

M. Christie: Bien souvent, la personne qui reçoit l'appel téléphonique connaît celui qui

[Texte]

calling and he can testify to that. He knows the voice, he knows the person. When the calls are coming from unknown sources, I suppose the Crown will have to try to enlist the aid of the telephone companies in that particular area. I believe the telephone companies would co-operate with the Crown in relation to a problem like this.

Mr. MacEwan: Yes.

Mr. Christie: It is a problem for them, too.

Mr. MacEwan: Yes. I understand there are ways, Mr. Chairman, for the telephone companies...

Mr. Christie: They can trace these telephone calls.

Mr. MacEwan: Yes. Finally I should like to ask the Minister whether a call made to a home followed by heavy breathing on the telephone would constitute harassment?

Mr. Turner (Ottawa-Carleton): Not one call.

Mr. MacEwan: Would more than one?

Mr. Turner (Ottawa-Carleton): You forgot the word "repeated". Yes, that is the type of call we are trying to get.

Mr. MacEwan: I see, thank you.

Mr. Turner (Ottawa-Carleton): I do not want you to confuse that with the breathalyzer test.

Mr. MacEwan: No, no.

The Chairman: Mr. Gilbert.

Mr. Gilbert: Mr. Chairman, with regard to this question of harassment I wonder whether we can stop telephone solicitations by magazine companies, people selling floor polishers and so forth.

Mr. Turner (Ottawa-Carleton): That is only one call to a selected list from a telephone book. The person who gets the one call may get a lot of calls from different people, but he is not being harassed by the one call.

Mr. Gilbert: He is certainly being annoyed.

Mr. Turner (Ottawa-Carleton): Yes.

Mr. Gilbert: You are good for two a week in Toronto.

[Interprétation]

appelle et il peut en témoigner. Il reconnaît la voix, il connaît la personne. Par contre, lorsque les appels proviennent de personnes inconnues, je suppose que la Couronne devra faire appel aux compagnies de téléphone dans le secteur en question. Je pense que les compagnies de téléphone collaboreront quand il s'agit d'un problème de ce genre.

Mr. MacEwan: Oui.

Mr. Christie: Car c'est un problème pour les compagnies de téléphone aussi.

Mr. MacEwan: Oui, je sais, monsieur le président, que les compagnies de téléphone disposent de moyens.

Mr. Christie: Ils peuvent déterminer l'origine de ces appels.

Mr. MacEwan: Oui. Enfin, je voudrais demander au ministre si un appel fait à une maison, suivi par une respiration bruyante au téléphone constituerait un harcèlement?

Mr. Turner (Ottawa-Carleton): Pas s'il n'y a qu'un seul appel.

Mr. MacEwan: Donc il faut plus d'un appel.

Mr. Turner (Ottawa-Carleton): Vous avez oublié le terme «répété». Oui, c'est ce genre d'appel que nous essayons d'intercepter.

Mr. MacEwan: Je vois, merci.

Mr. Turner (Ottawa-Carleton): Je ne veux pas que vous confondiez ceci avec l'épreuve de l'ivressomètre.

Mr. MacEwan: Je comprends cela.

Le président: Monsieur Gilbert.

Mr. Gilbert: Monsieur le président, en ce qui concerne le harcèlement, je me demande si l'on pourrait mettre un terme aux sollicitations faites par des gens qui vendent des cireuses, des abonnements aux journaux, etc.

Mr. Turner (Ottawa-Carleton): Il s'agit d'un seul appel effectué à partir d'une liste choisie dans un annuaire téléphonique. La personne qui reçoit un de ces appels peut en recevoir beaucoup d'autres provenant de différentes personnes, mais ce n'est pas ce qu'on appelle «harasser».

Mr. Gilbert: Mais la personne qui reçoit ce genre d'appels est vraiment importunée.

Mr. Turner (Ottawa-Carleton): Oui.

Mr. Gilbert: Si vous êtes à Toronto, vous en recevrez certainement deux par semaine.

[Text]

Mr. Turner (Ottawa-Carleton): I do not know how the Criminal Code could cover that, Mr. Gilbert. This is harassment by one person in a continued course of conduct against another person.

Clause 22, proposed Section 315 agreed to as amended.

Mr. Turner (Ottawa-Carleton): As amended, yes, without lawful excuse.

• 1605

The Chairman: Mr. Murphy, did you make the amendment?

Mr. Murphy: Yes.

Mr. Turner (Ottawa-Carleton): The words were, "without lawful excuse and with intent to harass." We will call it the Murphy amendment.

On Clause 23, proposed Section 387.

Mr. Turner (Ottawa-Carleton): Would you like a short explanation of this?

The Chairman: Yes, please.

Mr. Turner (Ottawa-Carleton): Gentlemen, this amends Section 387 of the Code which deals with cruelty to animals. It adds four new subsections. Subparagraph (3) provides that:

... evidence that a person failed to exercise reasonable care or supervision of an animal or bird thereby causing it pain, ...

Is in the absence of any evidence to the contrary, proof of wilfully causing or permitting, as owner, unnecessary pain, suffering or injury to an animal or bird, or proof of wilful neglect causing damage or injury to birds or animals while they are being driven or conveyed. In other words, the evidence that somebody failed to exercise reasonable care or supervision of an animal is considered to be prima facie evidence of the crime.

This provision is new to Bill C-150. It was not in Bill C-195. It was not in the bill introduced by Mr. Trudeau. It has been put in as the result of submissions received over the years by Societies for Prevention of Cruelty to Animals, and we considered it a worthwhile submission.

[Interpretation]

M. Turner (Ottawa-Carleton): Je ne peux voir comment le Code criminel pourrait y remédier, monsieur Gilbert. Il n'y a délit que lorsqu'il s'agit d'une personne qui harcèle une autre de façon continue.

Le président: L'article 22 du bill relatif au nouvel article 315 amendé est adopté.

M. Turner (Ottawa-Carleton): Amendé, oui, «sans raison valable et avec intention de nuire».

Le président: Monsieur Murphy, avez-vous fait l'amendement?

M. Murphy: Oui.

M. Turner (Ottawa-Carleton): «Sans excuse valable et avec l'intention de harasser.» Nous l'appellerons «l'amendement Murphy».

L'article 23 du Bill relatif au nouvel article 387.

M. Turner (Ottawa-Carleton): Voulez-vous un bref aperçu?

Le président: Oui, s'il vous plaît.

M. Turner (Ottawa-Carleton): Messieurs, ce nouvel article modifie l'ancien article 387 du Code qui porte sur la cruauté envers les animaux. Cela fait quatre nouveaux paragraphes. Le sous-alinéa 3 prévoit que:

... la preuve qu'une personne a omis d'accorder à un animal ou à un oiseau des soins ou une surveillance raisonnables, lui causant ainsi de la douleur ...

...en l'absence de toute preuve contraire, que cette douleur, ces souffrances ... 387 (1) a) volontairement cause ou, s'il en est le propriétaire, volontairement permet que soit causée, à un animal ou un oiseau, une douleur, souffrance ou blessure, sans nécessité; b) par négligence volontaire cause une blessure ou lésion à des animaux ou à des oiseaux alors qu'ils sont conduits ou transportés. Autrement dit, la preuve que quelqu'un a omis d'accorder à un animal ou à un oiseau des soins ou une surveillance raisonnables, est considérée comme étant une preuve prima facie du délit. C'est une disposition qui vient d'être ajoutée au Bill C-150. Elle ne se trouvait pas dans le Bill C-195 ni dans celui qui a été présenté par M. Trudeau. On l'a ajouté à la suite des représentations qui ont été faites il y a quelques années par les Sociétés protectrices des animaux et nous avons trouvé que la proposition en valait la peine.

[Texte]

Subparagraph (4) provides that:

...evidence that an accused was present at the fighting or baiting of animals or birds is, in the absence of any evidence to the contrary, proof that he encouraged, aided or assisted at such fighting...

In other words, if you attend a cock fight you are presumed to be contributing to the encouragement of, or aiding or betting, such a fight.

Subparagraph (4) was subparagraph (3) in Bill C-195. It has been slightly modified. The words.

...in the absence of any evidence to the contrary, proof...

have replaced—

...prima facie evidence...

We have done this throughout the Code. We are gradually eliminating the words "prima facie evidence" and substituting for them "in the absence of evidence to the contrary."

The purpose is to facilitate proof of the offence of cruelty to animals. I said that the Canadian Federation of Humane Societies has urged this amendment for years.

Subparagraph (5) provides for an order prohibiting a person convicted on two or more occasions of causing cruelty to animals from owning or having custody or control of domestic animals or birds for a period up to two years. The word "domestic" stayed in there and we hoped that somebody would move an amendment when we get to it, to strike the word "domestic" from subparagraph (5) and just leave the word "animal". It does not make any sense. This was subparagraph (4) in Bill C-195.

Subparagraph (6) makes it a summary conviction offence to disobey a prohibition order made under subparagraph (5) and this was subparagraph (5) of Bill C-195. The purpose here is to give us a more effective way of curbing cruelty to animals. Prosecution by itself appears not to have stopped a convicted person from pursuing his practice of being cruel to animals. We want the power to prohibit anybody who has been convicted on two or more occasions from owning an animal.

This amendment has been recommended by the Canadian Federation of Humane Societies for several years as well and we have accepted it. That is the policy behind the amendments, Mr. Chairman.

[Interprétation]

Le sous-alinéa 4 prévoit que:

...la preuve qu'un prévenu était présent lors du combat ou du harcèlement d'animaux ou d'oiseaux fait preuve, en l'absence de toute preuve contraire, qu'il a encouragé ce combat ou ce harcèlement ou y a aidé ou assisté.

Autrement dit, si vous assistez à un combat de coqs, on présume que vous avez contribué à encourager, à aider des combats de ce genre et à y parier.

Le sous-alinéa 4 modifie légèrement ce qui était autrefois le sous-alinéa 3 du Bill C-195. Les mots:

.. en l'absence de toute preuve contraire ...

ont remplacé:

... preuve prima facie.

Nous avons effectué ces changements dans tout le Code. Nous éliminons graduellement le terme «prima facie» et le remplaçons par «en l'absence de preuve contraire». Il s'agit de faciliter la preuve de l'accusation de cruauté envers les animaux. J'avais déjà dit que la Fédération canadienne des sociétés protectrices des animaux a préconisé cet amendement depuis des années.

Le sous-alinéa 5 prévoit: une ordonnance interdisant au prévenu d'être propriétaire d'un animal ou oiseau domestique ou d'en avoir la garde ou contrôle pendant une période ne dépassant pas deux ans.

Le terme «domestique» y est resté et nous espérons que, lorsqu'il sera question de cet article, quelqu'un propose un amendement pour l'éliminer du sous-alinéa 5 et pour ne laisser que le terme «animal». Cela n'a aucun sens. C'était le sous-alinéa 4 du Bill C-195.

En vertu du sous-alinéa (6): Est coupable d'une infraction punissable sur déclaration sommaire de culpabilité quiconque est propriétaire d'un animal ou oiseau domestique ou en a la garde ou le contrôle alors que cela lui est interdit du fait d'une ordonnance rendue aux termes du paragraphe (5).

Il s'agit de nous permettre de lutter plus efficacement contre la cruauté envers les animaux. La poursuite en elle-même ne semble pas avoir empêché le prévenu de continuer de faire preuve de cruauté envers les animaux. Nous voulons interdire quiconque a été condamné plus d'une fois, de posséder un animal.

Cet amendement a été recommandé par la Fédération des Sociétés canadiennes protectrices des animaux depuis des années et nous l'avons accepté. Voilà le principe qui explique cet amendement, monsieur le président.

[Text]

Mr. Hogarth: The only comment I have to make, Mr. Turner, is the one I made in the House. If we are going this far to protect animals from being cruelly dealt with, why do we retain the provisions of Section 388 (2) which provides that:

(2) A peace officer who finds cocks in a cock-pit or on premises where a cock-pit is located shall seize them and take them before a justice who shall order them to be destroyed.

It seems that we are not protecting those roosters too well.

Mr. Turner (Ottawa-Carleton): They would be destroyed humanely.

Mr. Hogarth: I am sure of that, but I do not know why they should be destroyed at all.

The Chairman: Shall Clause 23 as amended by Mr. Deakon, deleting the word "domestic" from subparagraph (5), line 33 carry?

• 1610

Mr. McCleave: Should it not be deleted from subparagraph (6) line 35 also, because it is the same?

Mr. Turner (Ottawa-Carleton): That is right.

Mr. Deakon: I notice, Mr. Turner, that you have nothing in these clauses regarding proper control of the treatment of animals in research institutions.

Does that affect the research institutions?

Mr. Turner (Ottawa-Carleton): I am advised, Mr. Deakon, that the problem of research is not affected by these amendments. Indeed, the whole problem of research or the use of animals for research is being reviewed by the Department of National Health and Welfare at the present time.

Mr. Deakon: Thank you, Mr. Minister.

The Chairman: Shall Clause 23 carry with line 32 in subsection (5) amended to delete the word "domestic" and line 35 in subsection (6) amended to eliminate the word "domestic"?

Mr. McCleave: Could the marginal note opposite (4) be corrected, too? I think the words should be "Presence at". I would hate to think this would have to be left to the Chamber of sober second thought.

[Interpretation]

M. Hogarth: Le seul commentaire que j'aie à faire, monsieur le Ministre, est celui que j'ai fait à la Chambre. Si nous nous efforçons tellement à protéger les animaux, contre la cruauté, pourquoi retenons-nous les dispositions de l'article 388 (2), qui prévoit que:

Un agent de la paix qui trouve des coqs dans une arène pour les combats de coqs ou sur les lieux où est située une telle arène, doit s'en emparer et les transporter devant un juge de paix qui en ordonnera la destruction.

Il semble que nous ne protégions pas suffisamment nos coqs contre la cruauté.

M. Turner (Ottawa-Carleton): On s'en débarrasserait humainement.

M. Hogarth: Je n'en doute pas, mais je ne vois pas de raison pour les détruire.

Le président: L'article 23 du bill, tel que modifié par M. Deakon, éliminant le mot «domestique» du sous-alinéa 5, à la ligne 33 est adopté.

M. McCleave: Ne devrait-on pas le rayer également du sous-alinéa 6 à la ligne 35 étant donné que c'est le même?

M. Turner (Ottawa-Carleton): C'est juste.

M. Deakon: Je constate, monsieur le ministre, que rien dans ces articles ne porte sur le traitement des animaux dans les instituts de recherches.

Cela comprend-il les établissements de recherche?

M. Turner (Ottawa-Carleton): On m'a fait savoir, monsieur Deakon, que le problème des recherches n'est pas affecté par ces amendements. De fait, l'utilisation des animaux pour les recherches, tout le problème de la recherche, doit relever pour le moment du ministère de la Santé nationale et du Bien-être social.

M. Deakon: Merci, monsieur le Ministre.

Le président: L'article 23 est-il adopté, avec la modification qui est apportée au paragraphe (5) aux lignes 32 et 33, qu'on élimine le mot «domestique». Et au paragraphe 6, la ligne 39, pour éliminer le terme «domestique».

M. McCleave: Pourrait-on modifier aussi la note en marge du paragraphe 4? Je pense que le mot devrait être «Présence à». En y repensant bien, je n'aimerais pas laisser cela à la Chambre.

[Texte]

Mr. Turner (Ottawa-Carleton): You do not have to move a motion. We will take notice of that. The margin does not form part of the statute, but thank you, Mr. McCleave.

Mr. McCleave: But they are in the statutes, though.

Mr. Turner (Ottawa-Carleton): We will draw that to the attention of the Queen's Printer.

Mr. Hogarth: Whoever he might be.

Mr. Gilbert: Mr. Chairman, I notice that in Section 387 in the Code there is a mention of domestic animals in subsection (1) (c). If we are going to be consistent, perhaps we should—

Mr. Turner (Ottawa-Carleton): Do you want to get rid of that?

Mr. Gilbert: It is also mentioned in (e).

Mr. Turner (Ottawa-Carleton): Could we take a look at that, Mr. Gilbert? There is a distinction here between the definition section and the prohibitory order section. Let us take a look at that and we will take it under advisement.

Mr. Gilbert: Thank you.

Clause 23 as amended, agreed to.

Clause 24 agreed to.

On Clause 25—Court of criminal jurisdiction

Mr. McCleave: Could I ask a question here, Mr. Chairman? Under the reference to Section 137 at the bottom of the page, who else can try under that Section now? As I read Section 137 it is an indictable offence and I wondered why it was put in this particular amendment.

Mr. Scollin: We have gone out of our way in this amendment—you will see over the page, on page 49—to add expressly Section 210 which deals with the offence of attempted murder. We thought it better at the same time expressly to deal with another section which defines an offence in terms of an attempt, and that is attempted rape.

In line with that principle, while there is an express offence created as an attempt, we have in each case added it to the list of cases triable only by a court with a judge and jury.

Mr. McCleave: That is not the effect of Section 137 now? I asked the question because I do not know.

[Interprétation]

Mr. Turner (Ottawa-Carleton): Vous n'avez pas besoin de présenter de motion. Nous allons prendre note de cela. Évidemment, la note explicative ne fait pas partie de la loi intégralement.

Mr. McCleave: Elle en fait cependant partie.

Mr. Turner (Ottawa-Carleton): Nous allons attirer l'attention de l'Imprimeur de la Reine sur ce sujet.

Mr. Hogarth: Qui qu'il soit.

Mr. Gilbert: Monsieur le président, dans l'article 387 du Code, on fait mention des animaux domestiques au paragraphe 1 c). Si nous voulons être consistants, nous devrions peut-être...

Mr. Turner (Ottawa-Carleton): Voulez-vous vous débarrasser de cela?

Mr. Gilbert: On en parle aussi à e).

Mr. Turner (Ottawa-Carleton): Pourrions-nous jeter un coup d'œil sur cela? Il y a une différence entre la définition et les ordonnances d'interdiction. Nous allons étudier la question.

Mr. Gilbert: Merci.

L'article 23 amendé est adopté.

L'article 24 est adopté.

A l'article 25—Cour de juridiction criminelle.

Mr. McCleave: Puis-je poser une question, monsieur le président? Au sujet de la référence à l'article 137, au bas de la page, sur quoi porte cet article? Je vois qu'il s'agit d'un délit passible de sanction et je me demandais pourquoi cette disposition a été insérée dans cet article.

Mr. Scollin: Nous nous sommes quelque peu écartés. Vous verrez que dans cette page et dans la page 49 nous voulions ajouter expressément l'article 210 qui traite de «tentative de meurtre». Il nous semblait alors préférable d'étudier un autre article qui définit une offense comme une tentative, c'est-à-dire une tentative de viol.

Conformément à ce principe, même s'il s'agit seulement d'une tentative, nous avons ajouté ces cas à la liste de ceux qui peuvent être jugés seulement par un tribunal avec juge et jury.

Mr. McCleave: Cela n'est pas l'effet de l'article 137 maintenant? Je le demande parce que je ne le sais pas.

[Text]

Mr. Christie: If you are within Section 413 it is a mandatory trial by judge and jury and the effect of moving Section 137 into that area will make it mandatory. The question was whether or not these attempted murder and attempted rape charges came within what is now (d) of Section 413(2). The question was raised by Mr. Justice Gould and Mr. Justice Wilson of the Supreme Court of British Columbia.

• 1615

Clause 25 agreed to.

On Clause 26—Consent

Mr. Hogarth: Why is it, Mr. Minister, that attempted rape and attempted murder must of necessity be mandatory jury trials? I appreciate that they might be, but is there something in particular you are concerned about?

Mr. Scollin: Mr. Hogarth, the position taken on this was that there are perhaps good reasons for an over-all review eventually. There are some offences in here that perhaps ought not to be mandatory jury trials at all, but maintaining the present principle, which we did for this Bill, we have left the circumstances of attempted rape and attempted murder as mandatory jury trials. Now, as a result of this eventual review it may be that some of these could and should come out.

Mr. Hogarth: Your position, then, is that you want to clarify the B.C. Judgments by putting them in and then exclude them later when an over-all review is held, if policy so dictates then.

Mr. Scollin: Yes.

Mr. Hogarth: I see; that is fine; thank you.

The Chairman: Mr. Murphy.

Mr. Murphy: This may not be right on the point here, but we are dealing in a way with jurisdiction of the courts. I wonder if the Minister or his officers are giving any consideration at all to amending other sections of the Code dealing with jurisdiction. I am speaking particularly of Section 467 which gives the magistrate absolute jurisdiction to hear certain offences, among them, obstructing public or peace officers and assaulting public or peace officers. I think these are the types of trials which should be jury trials or where, at least, the accused should have an option of being tried by a jury. I wonder if you might consider this?

[Interpretation]

M. Christie: Si vous parlez de l'article 413, il s'agit d'un procès obligatoire devant juge et jury et si l'on déplace l'article 137 vers ce sujet, cela rendra le procès obligatoire. Il s'agissait de savoir si ces tentatives de meurtre et de viol relèvent de ce qui est maintenant l'article 413 (2). Ce sont MM. Gould et Wilson de la Cour suprême de la Colombie-Britannique qui ont soulevé cette question.

L'article 25 est adopté.

L'article 26—Acquiescement.

M. Hogarth: Pourquoi, monsieur le ministre, les tentatives de viol et de meurtre doivent-elles nécessairement être jugées devant juge et jury? Je puis comprendre que cela soit le cas, mais est-ce qu'il y a quelque chose qui vous inquiète particulièrement?

M. Scollin: Nous avons décidé qu'il y avait peut-être de bonnes raisons pour une étude globale. Il y a peut-être des délits ici qui ne devraient pas nécessairement faire l'objet de procès devant jury. Mais en maintenant le principe de base, ce que nous avons fait pour le présent projet de loi, nous avons laissé les circonstances des tentatives de meurtre et de viol comme devant faire l'objet d'un procès devant juge et jury. A la suite de cette étude éventuelle, on pourrait constater qu'il y aurait lieu d'en laisser tomber quelques-unes.

M. Hogarth: Par conséquent, vous voulez expliciter le jugement qui avait été rendu en Colombie Britannique en incorporant ces deux délits, ces deux accusations dans l'article en cause, et en les enlevant par la suite si une étude globale le justifie.

M. Scollin: Oui.

M. Hogarth: Je vois; très bien, merci.

Le président: Monsieur Murphy.

M. Murphy: Mes propos ne se rattachent peut-être pas exactement à ce point, mais comme nous nous intéressons à la compétence des tribunaux, je me demande si le ministre ou ses fonctionnaires songent à modifier les articles du Code qui intéressent cette compétence, notamment l'article 467 qui donne aux magistrats juridiction absolue pour entendre certaines causes de délits, notamment: «Fait d'entraver un fonctionnaire public ou un agent de la paix» ou «insulte proférée contre un agent de la paix ou un agent de la police». Ce genre de délit ne devrait-il pas être jugé devant un jury ou l'accusé, le prévenu ne devrait-il pas avoir au moins l'occasion de choisir de comparaître devant un jury. Est-ce que cette possibilité peut être considérée?

[Texte]

Mr. Turner (Ottawa-Carleton): There is no doubt about it, Mr. Chairman; Mr. Murphy has hit upon, an anomaly and this is a proper subject for review by a national law reform commission, to pick out this type of inconsistency. It is something we would like to pick up in the future and I agree with him.

Clauses 26 and 27 agreed to.

On Clause 28—

Mr. Hogarth: This is the provision where the accused can plead to an offence committed within the province in which he was found apprehended or otherwise brought before the court?

Mr. Turner (Ottawa-Carleton): That is right. The explanatory notes are very complete here.

Mr. Hogarth: Why is it that the Attorney General should have to consent if it is within the same province?

Mr. Turner (Ottawa-Carleton): I think this certainly would not have been in the purview of your practice, Mr. Hogarth, but it really is to prevent the defence counsel from shopping around the province for the right magistrate.

Mr. Hogarth: Of course, it is the Crown that brings him before the magistrate in the first instance.

Mr. Turner (Ottawa-Carleton): This is why the consent of the Attorney General is needed.

Mr. Hogarth: If you would explain to me how to shop, it might well come within the purview of my practice. My point is, Mr. Turner, that certainly in our province all the magistrates have province-wide jurisdiction and shall now, I understand, be known as judges.

Mr. Turner (Ottawa-Carleton): But they do not exercise the right. I want to say that the change really was made to meet an objection made by Mr. McMorran to the effect that this section was in conflict with Section 414 of the Code. This change will put the matter beyond argument.

Mr. Hogarth: I appreciate that, but there is still no need to effect that change by requiring the mandatory consent of the Attorney General, is there?

Mr. Turner (Ottawa-Carleton): You may have a point, but none of the Deputy Attorneys General saw any objection to it.

[Interprétation]

M. Turner (Ottawa-Carleton): Il ne fait pas de doute, monsieur le président, que M. Murphy signale une anomalie. C'est un sujet qui mérite d'être révisé par une commission nationale de réforme juridique. C'est quelque chose que nous aimerions régler à l'avenir. Je suis tout à fait d'accord avec lui.

Les articles 26 et 27 sont adoptés.

L'article 28—

M. Hogarth: Il s'agit d'une disposition en vertu de laquelle le prévenu peut plaider coupable à un délit commis dans la province où il a été arrêté ou traduit devant un tribunal.

M. Turner (Ottawa-Carleton): Je crois que les notes explicatives sont très complètes.

M. Hogarth: Pourquoi le procureur général devrait-il consentir, si c'est à l'intérieur de la même province?

M. Turner (Ottawa-Carleton): Je ne crois pas que cela ait fait partie des limites de votre pratique, mais c'est pour empêcher l'avocat de la défense de commencer à chercher un magistrat de son choix.

M. Hogarth: Bien entendu, mais c'est la Couronne qui présente l'accusation.

M. Turner (Ottawa-Carleton): Oui, c'est pourquoi le consentement du procureur général est requis.

M. Hogarth: Si vous m'expliquiez comment chercher un magistrat de mon choix peut-être, cela servirait à ma pratique... Dans ma province tous les magistrats ont une juridiction qui s'étend sur tout le territoire de la province et porteront maintenant le nom de juges.

M. Turner (Ottawa-Carleton): Mais ils n'en exercent pas la juridiction. Je tiens à signaler que le changement résulte d'une objection faite par M. McMorran à savoir que cet article allait à l'encontre de l'article 414 du Code. Ce changement va résoudre la question.

M. Hogarth: Oui, mais je ne vois pas pourquoi il faut nécessairement le consentement du procureur général pour autant.

M. Turner (Ottawa-Carleton): C'est peut-être vrai, mais aucun des procureurs généraux adjoints n'y a vu d'objection.

[Text]

Mr. Hogarth: The problem is that it delays the proceedings in the police court in the first place. It puts the thing over for another two or three days. The man wants to get rid of his case and get out, one way or the other.

• 1620

Mr. Turner (Ottawa-Carleton): He is not in custody, you know.

Mr. Hogarth: No, but be that as it may, he wants to get rid of it. He has gone from, say, Prince George over to Smithers to plead and he wants to get rid of the case. It delays it, that is all. That is the only suggestion I have to make.

Mr. Turner (Ottawa-Carleton): Our feeling is that the delay is not that prejudicial because really it is dealing with people or persons not in custody.

Clauses 28 and 29 agreed to.

On Clause 30—

The Chairman: Mr. Hogarth?

Mr. Hogarth: I must confess, Mr. Turner, it has been some time since I reviewed the Bill and these provisions, but as I understand the Criminal Code as it now stands, if a peace officer sees a man on a street in Ottawa and he knows that the man is wanted in, say, Winnipeg, he has no power to arrest him on the warrant outside the province in which he is wanted; is that not so?

Mr. Turner (Ottawa-Carleton): If the offence is indictable he can be arrested outside the jurisdiction, under section 435A. Let us read it:

435. A peace officer may arrest without warrant

(a) a person who had committed an indictable offence or who, on reasonable and probable grounds, he believes has committed or is about to commit an indictable offence or is about to commit suicide, or

Mr. Hogarth: The problem is that he does not know anything about what happened in Winnipeg. He only saw in the R.C.M.P. *Gazette* that a warrant was outstanding, and he has reasonable and probable grounds to believe it is the same man.

We find it necessary in subsection (c) to provide that he may arrest where he believes the warrant "is in force within the territorial jurisdiction in which that person is found".

[Interpretation]

Mr. Hogarth: Cela retarde les procédures de deux ou trois jours. Le prévenu veut se débarrasser de l'affaire, le plus tôt possible d'une façon ou d'une autre.

Mr. Turner (Ottawa-Carleton): Il n'est pas en détention pour autant.

Mr. Hogarth: Il peut néanmoins vouloir se débarrasser de l'affaire. S'il est passé, disons, de Prince-Georges à un autre endroit pour plaider sa cause, il veut s'en débarrasser le plus tôt possible. C'est la seule suggestion que j'ai à faire.

Mr. Turner (Ottawa-Carleton): Nous estimons que le retard ne cause pas tellement de préjudice puisqu'il s'agit de gens qui ne sont pas en détention.

Les articles 28 et 29 sont adoptés.

L'article 30.

Le président: Monsieur Hogarth.

Mr. Hogarth: Je dois avouer, monsieur Turner, que depuis que j'ai étudié certaines dispositions du bill, mais si je comprends bien le Code criminel, un agent de la paix reconnaît un homme dans une rue d'Ottawa et s'il sait que cet homme fait l'objet d'un mandat, à Winnipeg par exemple, il n'est pas habilité à l'appréhender pour le mandat qui a été émis en dehors de la province où cet homme se trouve. N'est-ce pas le cas?

Mr. Turner (Ottawa-Carleton): S'il s'agit d'un crime, il peut être arrêté ailleurs que dans la juridiction où il a été accusé, en vertu de l'article 435a). Je vous le lis.

Un agent de la paix peut arrêter sans mandat a) une personne qui a commis, ou qui, d'après ce qu'il croit pour des motifs raisonnables et probables, a commis, ou est sur le point de commettre, un acte criminel, ou est sur le point de commettre un suicide, ou...

Mr. Hogarth: Le problème est qu'il ne sait rien de ce qui s'est passé à Winnipeg. Tout ce qu'il sait, c'est lu dans la *Gazette* de la GRC qu'un mandat a été émis. S'il a raison de penser que c'est la même personne. Nous croyons nécessaire dans le sous-alinéa C de pourvoir à ce qui soit arrêter lorsque l'agent de la paix croit que le mandat est: «exécuté dans les limites de la juridiction territoriale dans laquelle est trouvée cette per-

[Texte]

In dealing with the apprehension of offenders in the modern state, and particularly in Canada where people are moving from province to province, if a peace officer has reasonable and probable grounds to believe that a warrant exists for the man's arrest for an indictable offence anywhere in Canada, he should be protected and be permitted to arrest him; and then he should be brought before the magistrate when that warrant is...

Mr. Turner (Ottawa-Carleton): He is, for indictable offences; but there is a gap in the law in a summary situation. All this does is extend to a summary situation the power to arrest without warrant. Suppose, in British Columbia, a peace officer in Prince George knows that a warrant for the man's arrest has already been issued in Vancouver: He will be able to arrest without warrant in Prince George. That is to cover the gap in the law in a summary situation.

Mr. Hogarth: I do not want to labour the point, if I am wrong, but I take it you are of the opinion, under Section 435 subsection (a) as it now exists, that:

435. A peace officer may arrest without warrant

(a) a person who had committed an indictable offence or who, on reasonable and probable grounds, he believes has committed...

You are of the opinion that that applies to the man found in Ottawa, for whom the police officer believes there is a warrant outstanding in Winnipeg?

Mr. Christie: That is correct. That is done all the time, as we understand it.

Mr. Hogarth: I think policemen may have some concern in that they do not know the man has committed an indictable offence. They only know that a warrant is outstanding for him, and they do not have reasonable and probable grounds to believe it, because they know absolutely nothing about the matter, other than that a telex has come through that a warrant exists for so-and-so's arrest.

If we are so concerned about what might happen within the province, surely we should also become concerned about what might happen province to province.

Mr. Turner (Ottawa-Carleton): This is the point of this amendment, Mr. Hogarth. At the moment, on an indictable offence we have no problem province to province because there is an automatic facility to arrest. In a summary

[Interprétation]

sonne.» En ce qui concerne l'arrestation des criminels dans un état moderne et au Canada en particulier, où les personnes passent d'une province à l'autre, si un agent de la paix a de bonnes raisons de penser qu'il y a un mandat contre un individu, pour un acte criminel, on devrait lui permettre de l'arrêter. Et l'individu doit alors être amené devant la cour.

M. Turner (Ottawa-Carleton): C'est ce que l'on fait dans les cas d'actes criminels. Mais il y a une échappatoire, dans la loi, en ce qui concerne la déclaration sommaire de culpabilité. Cela permet d'étendre le droit d'arrestation sans mandat à une situation de déclaration sommaire de culpabilité. En Colombie-Britannique, par exemple, un agent de la paix de Prince George peut arrêter une personne qui est recherchée à Vancouver, par exemple. Il sera donc habilité à faire l'arrestation sans mandat. Ceci comble les lacunes de la loi.

M. Hogarth: Je ne veux pas revenir là-dessus, mais si j'ai bien compris, vous pensez que d'après l'article actuel 435 (a),

Un agent de la paix peut arrêter sans mandat

a) une personne qui a commis un acte criminel, ou contre laquelle il a des motifs raisonnables et probables de croire...

Est-ce que cela s'applique à une personne qui est appréhendée à Ottawa et contre qui l'agent de la paix croit qu'il y a un mandat d'émis à Winnipeg.

M. Christie: C'est exact. Si j'en crois ce qu'on me dit, c'est une pratique courante.

M. Hogarth: Je pense que l'agent de police peut s'inquiéter, car il ne sait pas si cet homme a commis un crime. Il sait simplement qu'il y a un mandat d'émis contre lui. Il ne sait absolument rien de l'affaire, sauf qu'il a reçu un message sur le télex disant qu'un mandat a été émis pour tel et tel. Si on s'inquiète de ce qui peut se passer dans une même province, on devrait s'inquiéter de ce qui se passe d'une province à l'autre.

M. Turner (Ottawa-Carleton): C'est le pour-quoi de cet amendement: En ce moment, pour un crime, il n'y a pas de problème, parce que l'agent de police a automatiquement le droit d'arrêter le criminel. Mais sur une déclaration

[Text]

situation, let us say for a crime committed in Ontario, the peace officer in British Columbia would only have grounds for making an arrest for a summary situation under paragraph (a) or (b) of 435. He would have to have the endorsed warrant; or a situation

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under (a) and (b). He either has to have the endorsed warrant on a summary situation, or would have to catch him in the act, under (a). This means that if he knows that somewhere in the province a warrant is issued, he does not have to have that warrant in his possession for a summary situation. That is what this does. It just fills up a gap between an indictable and a summary situation.

Mr. Hogarth: Mr. Chairman, I do not want to labour this technical point, because it is delaying the Committee. Could we carry this point? I will make my submissions to Mr. Christie later, because I think a point has been overlooked here.

The Chairman: Thank you.

Clause 30 agreed to.

On Clause 31...

Mr. Chappell: This covers the situation of arrest without warrant only?

Mr. Turner (Ottawa-Carleton): Yes. With or without warrant—"A peace officer who receives delivery of and detains a person who has been arrested without warrant or who arrests a person with or without warrant..."

Mr. Chappell: Let me give you an example to see if there is anything we can do at this time to help one of my constituents, as a result of a private complaint. A warrant was issued on Tuesday night. The police came from a far-away place to pick her up on Saturday night, after all the stores were closed. At about 11 o'clock we got the Crown Attorney. He demanded \$1,000 bail, although it was such a trivial matter that it was withdrawn two days later. Had we...

Mr. Turner (Ottawa-Carleton): This helps your client, by the way.

Mr. Chappell: Yes, I appreciate that; but there is the extra aspect I am wondering about. Had we not been able to persuade the Crown Attorney that night to arrange for a local person to set the bail she would have been taken 100 miles away and probably held until Monday morning.

I appreciate the fact that there may be changes in the law in future, that more summons may be issued than warrants ...

[Interpretation]

sommaire de culpabilité, disons pour un crime commis dans l'Ontario, l'agent de la paix en Colombie-Britannique n'aurait le droit de faire une arrestation que d'après l'article 435 a) et b). Il faudrait que le policier ait un mandat endossé.

Il faut que le mandat soit endossé et cela lui permet, s'il sait que quelque part dans la même province, un mandat a été émis, de ne pas avoir en main besoin de ce mandat pour faire l'arrestation. C'est simplement un moyen de combler une lacune dans la loi.

M. Hogarth: Monsieur le président, je n'oserais pas trop insister. C'est un point technique et nous retardons les travaux du comité. Pourrions-nous passer à autre chose et je vais en parler à M. Christie, plus tard, parce que je pense qu'on a fait un oubli.

Le président: Merci. L'article 30 est adopté.

L'article 31.

M. Chappell: Cela couvre la situation d'une arrestation sans mandat uniquement?

M. Turner: Oui. Avec ou sans mandat. Un agent de la paix à qui on livre une personne arrêtée sans mandat et qui la détient, ou qui arrête une personne avec ou sans mandat...

M. Chappell: Je voudrais vous donner un exemple, pour voir ce que nous pouvons faire pour remédier à la situation.

Dans mon comté, une personne à la suite d'une plainte faite par un particulier, il y a eu un mandat d'émission contre cette personne le mardi soir. L'agent de police l'a arrêtée le samedi soir. Les magasins étaient fermés, mais à 11 heures du soir, le procureur de la Couronne a exigé un cautionnement de \$1000, même si l'affaire était si peu importante que la plainte était retirée deux jours plus tard.

M. Turner (Ottawa-Carleton): Cela est utile à votre client.

M. Chappell: Oui, je comprends, mais si nous n'avions pas pu persuader le procureur général, ce soir-là, de consentir à ce qu'une personne de la localité verse le cautionnement l'inculpé aurait été emmené à 100 milles de là et probablement détenu jusqu'au lundi matin. J'apprécie le fait que la loi pourra peut-être être changée plus tard. Peut-être aurons-nous plus de citations à comparaître et moins de mandats d'amener...

[Texte]

Mr. Turner (Ottawa-Carleton): I hope so.**Mr. Chappell:** ...but it strikes me, Mr. Turner, that the words "where a justice is available within a period of twenty-four hours", are a little weak. Why should it not be as early as possible, if not forthwith?**Mr. Turner (Ottawa-Carleton):** We have left the existing law as it is, but we have added the rider at the bottom. That is to say, we make it clear now that a peace officer may, on his own initiative, release a person whom he has arrested without warrant, without first going before a justice.**Mr. Chappell:** Yes.**Mr. Turner (Ottawa-Carleton):** Therefore, this exempting clause completely solves your problem in (a) and (b), because it now allows a peace officer not to have to try to find the justice if, on his own initiative, he is satisfied that such person should be released unconditionally.**Mr. Chappell:** I agree with you completely relative to the ones he releases, but the ones he does not release, because in his judgment he feels he should wait for a justice—these persons may be held for one or two days.**Mr. Turner (Ottawa-Carleton):** Would you mind if we left that for a general review of bail, because I think it relates to it? It will be brought up the next time we have this exercise.**Mr. Chappell:** It strikes me, Mr. Turner, that "where a justice is available within a period of twenty-four hours" is a little weak. What happens if he is at his cottage? Is he available, or has he to be in his office on Monday morning, the arrest having taken place on Friday night?**Mr. Turner (Ottawa-Carleton):** They usually do it on the telephone.**Mr. Chappell:** I have no experience of that. In Toronto they usually have to get a magistrate or a justice to go to jail.**Mr. Christie:** The problem, Mr. Chappell, was that quite a few police officers were interpreting section 438 subsection (2) as meaning that they had no choice; that once they had arrested a person they had to go through this rigmarole, which meant they had to incarcerate them overnight. What we are trying to provide for here is the situation in which a

[Interprétation]

M. Turner (Ottawa-Carleton): Je l'espère.**M. Chappell:** Mais il me semble, monsieur le ministre, que la terminologie est un peu faible, «si un juge de paix est disponible dans un délai de vingt-quatre heures». Pourquoi ne pas dire «aussitôt que possible» ou «immédiatement»?**M. Turner (Ottawa-Carleton):** Nous avons laissé la loi telle qu'elle est actuellement, mais nous avons ajouté une clause à la fin.

On dit clairement qu'un agent de la paix, de sa propre initiative, peut relâcher une personne qu'il a arrêtée sans mandat, sans que cette personne ait à se présenter devant un tribunal.

M. Chappell: Oui.**M. Turner (Ottawa-Carleton):** Cette clause d'exemption règle les problèmes a) et b) complètement, car le juge de paix, de sa propre initiative peut être convaincu qu'une personne doit être mise en liberté sans condition.**M. Chappell:** Je suis d'accord, mais pour ceux qui sont détenus, si l'agent de la paix est d'avis qu'il doit les détenir, ces personnes peuvent être détenues pendant un jour ou deux.**M. Turner (Ottawa-Carleton):** Eh bien, nous pourrions reviser cette question du cautionnement, et nous en reparlerons la prochaine fois.**M. Chappell:** Cela me frappe, car même ici le texte me semble un peu faible. «Si un juge de paix est disponible dans un délai de vingt-quatre heures», doit-il être à son bureau ou quoi? Qu'arrive-t-il s'il est à sa résidence? Ou doit-il être là le lundi matin seulement même si l'arrestation a eu lieu vendredi soir?**M. Turner (Ottawa-Carleton):** D'habitude on l'appelle par téléphone.**M. Chappell:** A Toronto, d'habitude on doit amener le juge de paix à la prison.**M. Christie:** Le problème, M. Chappell, c'est qu'un bon nombre de policiers avaient interprété l'article 438, paragraphe 2 en disant qu'ils n'avaient pas le choix; que lorsqu'ils arrêtaient quelqu'un, ils devaient se soumettre à toute cette procédure et les incarcérer durant la nuit. Et ce que nous essayons de faire, c'est qu'un policier qui a un cas

[Text]

sensible police officer, with the type of client you are talking about, will turn the girl loose and summons her. This is the point of the proposed amendment.

Mr. Chappell: He has a warrant outstanding.

Mr. Turner (Ottawa-Carleton): With or without?

Mr. Christie: She is a completely unknown quantity to him but after she is taken into custody she may be able to convince him that her case and her personality and so on are such that she could properly be released and summoned at a later date.

Mr. Chappell: Mr. Minister, I do not think it is quite as simple as you might imply. I think generally, in a large city, the police officers will try to carry out some normal, average practice. They will not have different rules for each. In Toronto the practice, as I understand it, is that if someone is arrested Friday night he stays there until the magistrate or justice comes on Saturday at four o'clock—if one comes. If not, he might have to stay the whole weekend.

Mr. Turner (Ottawa-Carleton): Anyway, Toronto is one of the places that this will cure, frankly, because Toronto is one of the places we have in mind. The Toronto police have been worried about their discretionary power. We are making it quite clear to them that they should have the discretion now to release unconditionally or on condition of appearance by way of summons. This solves—

Mr. Chappell: I am not quarrelling with that at all; I agree with that. I am asking why the justice cannot be made a little more available.

Mr. Turner (Ottawa-Carleton): Under the 24 hours?

Mr. Chappell: Faster than where a justice is available within a period of 24 hours. If he is not available it can be longer.

Mr. Turner (Ottawa-Carleton): "A" and "B" are two alternative situations. "A" is where a justice is available within 24 hours and "B" is where a justice is not available within a period of 24 hours. It depends on what part of the country we are talking about.

Clause 31 agreed to.

On Clause 32—

[Interpretation]

semblable au vôtre, soit amené à rendre sa liberté à ladite personne.

C'est le but de cet amendement.

M. Chappell: Eh bien, parce qu'il y a un mandat.

M. Turner (Ottawa-Carleton): Avec ou sans ...

M. Christie: Elle lui est parfaitement inconnue, mais après avoir été incarcérée elle peut toujours le convaincre qu'avec son cas et sa personnalité et ainsi de suite, il pourrait la libérer et la convoquer plus tard.

M. Chappell: Monsieur le ministre, je ne pense pas que ce soit aussi simple que vous voulez le laisser entendre. D'une façon générale, dans une grande ville, les policiers essaieront d'agir de façon normale et uniforme. Ils n'auront pas de règles différentes suivant les cas. A Toronto, si je comprends bien, il semble que si quelqu'un est arrêté le vendredi soir, il reste en prison jusqu'à ce que le magistrat ou le juge de paix viennent le samedi à quatre heures, si toutefois il vient. Sinon, il pourrait rester toute la fin de semaine en prison.

M. Turner (Ottawa-Carleton): Toronto est l'un des endroits où ceci s'applique, car, franchement, cette ville était un des endroits auxquels nous pensions. La police de Toronto s'est inquiétée de ses pouvoirs discrétionnaires. Nous leur faisons bien comprendre qu'ils devraient avoir la discrétion de libérer, sans condition, le prévenu ou sur promesse de comparution après convocation. Cela règle...

M. Chappell: Je suis d'accord. Je demande pourquoi il n'est pas plus facile de faire venir un juge de paix.

M. Turner (Ottawa-Carleton): Avant 24 heures?

M. Chappell: Plus vite que lorsqu'un juge de paix est disponible en dedans d'une période de 24 heures. S'il ne l'est pas, cela peut être plus long.

M. Turner (Ottawa-Carleton): «A et B» sont des situations différentes. «A», si l'un des juges de paix peut être trouvé avant 24 heures, et «B», s'il ne peut pas être trouvé dans une période de 24 heures. Cela dépend de l'endroit du pays dont on parle.

L'article 31 est adopté.

L'article 32.

[Texte]

M. Cantin: A la page 53, ligne 23, de la version française, le numéro de l'article est 31, alors qu'il devrait être 32.

M. Turner (Ottawa-Carleton): On l'a remarqué, monsieur Cantin. On va changer le numéro de l'article en français pour qu'il puisse correspondre avec la version anglaise et avec la réalité.

Mr. Christie: Where an accused, before a justice of the peace charged with an indictable offence, wants to be tried summarily for...

Mr. Hogarth: I beg your pardon; I have got it now. Where he is before a justice who has no jurisdiction he may elect to be tried by district magistrate.

Clause 32 agreed to.

On Clause 33—

Mr. Hogarth: Mr. concern with Clause 33 is although the magistrate may make an order that the proceedings of the preliminary hearing are not to be published, and that order would appear continuous until the end of the trial, what about...

Mr. Turner (Ottawa-Carleton): Or until he is discharged.

Mr. Hogarth: Yes, of course. What about the use of preliminary hearing transcripts during the course of the evidence given at the trial where a person or witness is extensively cross-examined on the evidence he gave at the preliminary? Does the prohibition order still continue?

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Mr. Turner (Ottawa-Carleton): Yes, but then you have a new situation. Then the newspaper would be reporting the evidence at the trial.

Mr. Hogarth: But extracted from the preliminary hearing transcript?

Mr. Turner (Ottawa-Carleton): No, no; put in at the trial. They ury is empanelled which is the important point.

Mr. Hogarth: I appreciate that, but the publishers might be a little concerned, that is all.

Mr. Turner (Ottawa-Carleton): We are not talking about a situation of legitimate publicity at an open trial once the jury is empanelled. If the evidence at the preliminary inquiry is then brought into the trial it becomes part of the evidence of the trial. What we are trying to prevent is a prelimi-

[Interprétation]

Mr. Cantin: Page 53, line 23, the French version says clause 31, while it should actually be 32.

Mr. Turner (Ottawa-Carleton): That has been noted, Mr. Cantin. We will change the number of the clause in French to match the English version and to correspond with reality.

Mr. Christie: Lorsqu'un accusé est traduit devant un juge de paix, accusé d'un délit criminel, désire être jugé sommairement...

M. Hogarth: Je vous demande pardon, je l'ai maintenant. Lorsqu'il est devant un juge de paix qui n'a pas juridiction, il peut demander à être jugé devant un magistrat de district.

L'article 32 est adopté.

L'article 33.

M. Hogarth: Ce qui me préoccupe à l'article 33, c'est qu'un magistrat peut ordonner de ne pas publier le compte rendu de l'enquête préliminaire, et que l'ordonnance semblerait permanente jusqu'à la fin du procès, mais alors...

M. Turner (Ottawa-Carleton): Ou jusqu'à ce qu'il soit libéré.

M. Hogarth: Oui, bien sûr. Mais que dire de l'utilisation du compte rendu de l'enquête préliminaire pendant les témoignages rendus au procès lorsqu'un témoin fait l'objet d'un long contre-interrogatoire sur son premier témoignage? Est-ce que cette interdiction vaut toujours?

M. Turner (Ottawa-Carleton): Oui, mais alors, nous nous trouvons dans une nouvelle situation. Le journal ferait alors un reportage sur les témoignages du procès.

M. Hogarth: Extrait de l'audience préliminaire?

M. Turner (Ottawa-Carleton): Non, non. Au procès. Ce qui est important, c'est que le jury est constitué.

M. Hogarth: Je comprends, mais ce sont les éditeurs qui vont être un peu inquiets, c'est tout.

M. Turner (Ottawa-Carleton): Nous ne parlons pas d'une publicité légitime autour d'un procès public lorsque le jury est constitué. Lorsque le témoignage à l'enquête préliminaire est publié au procès, il devient incorporé aux témoignages du procès. Ce que nous voulons empêcher, c'est qu'un procès prélimi-

[Text]

nary pre-trial by newspaper prior to the time that a magistrate may have bound a man over for trial. He may find that the charges are dismissed but the damage has been done.

The Chairman: Shall Clause 33 carry?

Mr. McCleave: May I ask one question? Even if the accused, after being informed of his rights, decides not to make that request, why in certain cases should not the magistrate have that right on his own initiative without regard to the request of the party?

Mr. Turner (Ottawa-Carleton): It is like a right of privilege, I guess, Mr. McCleave. You are entitled to waive it and this is a right in favour of the accused which he can waive. It is not to protect the court, not to protect the magistrate; it is to protect the accused. It is drawn to his attention. If he wants to waive it on the advice of counsel that is his business, I guess. We look upon it as a right which can be waived. He has a right to a public trial, to.

Mr. McCleave: Yes, of course, but it seems to me there are cases where the evidence might be so extreme—sexual offences involving children and the like—that...

Mr. Turner (Ottawa-Carleton): There is another section here somewhere, and I am trying to find it, where the judge has the right and the magistrate as well.

428. The Trial of an accused that is a corporation or who is or appears to be sixteen years of age or more shall be held in open court, but where the court, judge, justice or magistrate, as the case may be, is of opinion that it is in the interest of public morals, the maintenance of order or the proper administration of justice to exclude all or any members of the public from the court room, he may so order.

Mr. McCleave: That answers my point. Thank you.

Clause 33 agreed to.

On Clause 34...

Mr. Hogarth: Mr. Chairman, I have a grave concern about this Clause. This abolishes a warrant of committal where the accused goes on bail.

Mr. Turner (Ottawa-Carleton): We are talking about Clause 34 now?

Mr. Hogarth: Yes. Am I correct?

Mr. Scollin: This Clause avoids the necessity, where the committing justice also happens

[Interpretation]

naire soit fait par les journaux avant que le magistrat ait envoyé un homme subir son procès. Il arrive que les accusations soient abandonnées, mais le mal a été fait.

Le président: L'article 33 est-il adopté?

M. McCleave: Puis-je poser une question? Mais, même après avoir été informé de ses droits, si le prévenu décide de ne pas faire sa demande, pourquoi, en certains cas, le magistrat n'aurait-il pas ce droit de sa propre initiative indépendamment de la demande de la partie?

M. Turner (Ottawa-Carleton): C'est une espèce de privilège, je crois, monsieur McCleave. On peut toujours y renoncer, c'est un droit consenti au prévenu auquel il peut renoncer. Il s'agit de protéger le prévenu non pas la Cour, non pas le magistrat. Il en est informé. S'il veut renoncer à son droit sur avis de son avocat, cela le regarde. Pour nous, c'est un droit auquel on peut renoncer. Il a aussi droit à un procès public.

M. McCleave: Oui, mais parfois les témoignages pourraient être tellement extraordinaires, des délits sexuels impliquant des enfants etc., qui...

M. Turner (Ottawa-Carleton): Il y a un autre article ici, j'essaie de le trouver, où le juge ou le magistrat en a le droit:

Lorsqu'un prévenu est une corporation ou est ou paraît être âgé de seize ans ou plus, son procès doit avoir lieu en audience publique, mais lorsque la cour le juge, le juge de paix ou le magistrat, selon le cas, est d'avis qu'il est dans l'intérêt de la moralité publique, du maintien de l'ordre ou de la bonne administration de la justice, d'exclure de la salle d'audience l'ensemble ou l'un quelconque des membres du public, il peut en ordonner ainsi.

M. McCleave: Cela répond à ma question. Merci.

L'article 33 est adopté.

L'article 34.

M. Hogarth: Monsieur le président, cet article me préoccupe beaucoup. Ceci abolit le mandat de dépôt lorsque l'accusé est libéré sous cautionnement.

M. Turner (Ottawa-Carleton): Vous parlez de l'article 34?

M. Hogarth: Oui. Ai-je raison.

M. Scollin: Cet article évite la nécessité, lorsque le juge qui prononce le renvoi se

[Texte]

to be a magistrate authorized to grant bail, of having to execute a warrant in Form 17 and send them to jail. There was a decision, as you probably know, in one of the courts—Mr. Justice Riley's decision—where, in fact, they had proceeded and agreed to bail and everything else and one of the prerogative writs was taken against the committal and Mr. Justice Riley held that a warrant had to be drawn up and executed.

Mr. Hogarth: I just want the answer to the simple question, does this abolish the warrant of committal where the magistrate sets the bail?

Mr. Scollin: When the committing justice also happens to be a magistrate, it does.

Mr. Hogarth: All right. My concern is this: I think, with respect, that there should be an alternate order of the committing court to a warrant of committal. The warrant of committal actually commits the man to prison and it does not, in a sense, commit him to stand trial. It does both, really. It commits him to prison and it commits him to stand trial, but if you are moving to set aside the preliminary hearing proceedings by way of *certiorari* or other remedy, you have no order of the court to rely on.

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You have no order of the court to put before the superior court to base your proceedings, on, and therefore I think if you are going to abolish the warrant of committal when the accused does not go into custody, you should substitute for it an order of some other form saying he is ordered to stand trial but now on bail, or words to that effect.

I have just one more point. I think you might end up in extreme difficulties when his bail is cancelled before the trial because somebody then has to sign a warrant of committal to get him back in. I think in those two situations you should have a special order which will require him to stand trial at the next court of competent jurisdiction. Whether he is committed or not is another matter.

Mr. Scollin: Firstly, as a practical matter, the committing justice, who is a magistrate, will in fact commit him for trial. If he makes an order admitting him to bail, the accused will then have to provide a form of recognizance as set out in form 28, including the term that he will appear for his trial when required. Therefore you have adequate evidence that the proceedings have been properly concluded and I would not think there is

[Interprétation]

trouve à être aussi un magistrat habilité à consentir le cautionnement, de devoir exécuter un mandat sur la formule 14 et de les envoyer à la prison. Il y a eu une décision que vous connaissez peut-être, dans une des cours, la décision de Monsieur le juge Riley, dans laquelle il y avait eu droit au cautionnement, on a fait un writ pour le renvoi, et Monsieur le juge Riley a jugé qu'il fallait absolument que le mandat soit rédigé et exécuté.

M. Hogarth: La question est pourtant simple. Cela abolit-il le mandat de dépôt lorsque le cautionnement est consenti?

M. Scollin: Oui, lorsque le juge en question est aussi un magistrat.

M. Hogarth: Bien. Voici ce qui me préoccupe et, en toute déférence il devrait, à mon avis, exister un ordre de rechange. Le mandat de dépôt en fin de compte, renvoie l'homme en prison, et ne le tient pas de subir un procès. On l'envoie en prison et on le condamne à subir son procès, mais si vous voulez supprimer l'enquête préliminaire par *certiorari* ou autrement, il n'y a pas d'ordonnance du tribunal sur laquelle on peut se fonder. On ne peut pas présenter à la cours supérieure l'ordre du tribunal sur lequel vous fondez vos délibérations. Si vous voulez supprimer le

mandat de dépôt lorsque l'accusé n'est pas incarcéré, vous devriez y substituer une autre ordonnance, disant qu'il est condamné à subir son procès, mais qu'il est maintenant en liberté sous cautionnement ou rédigé en termes semblables.

Lorsque son cautionnement est annulé avant le procès, cela risque de susciter des difficultés très graves, car quelqu'un devra alors exécuter un mandat de dépôt pour le rattraper. Dans ces deux situations, il devrait y exister une ordonnance spéciale qui exigera qu'il subisse son procès devant la prochaine cour ayant la juridiction voulue. C'est une autre affaire de savoir s'il est ou non renvoyé pour subir son procès.

M. Scollin: D'abord, au point de vue pratique, le juge de paix qui prononce le renvoi, et qui est magistrat, le renverra, de fait, pour subir son procès. Ensuite, s'il lui accorde la liberté provisoire sous cautionnement, l'accusé devra alors produire une formule de reconnaissance, comme l'indique la formule 28, en disant qu'il se rendra à son procès lorsqu'on le lui demandera. On a donc la preuve que les procédures ont été bien sui-

[Text]

any doubt at all that if the accused wishes to contest the validity of the committal by a prerogative writ the mere absence of a committal warrant in form 17 would not make any difference at all.

Mr. Hogarth: Except that all *habeas corpus* proceedings have been based on the committal warrant, of course, and I should think that *certiorari* would be based on a similar order. All I say is that when you abolish the committal you substitute an order of the court that he has been committed to stand trial. Perhaps it is not worthy of pursuit, but you are going to run into trouble sooner or later on it.

Mr. Scollin: I do not think any mere technicality or formality of that sort would prevent the courts from listening to the same arguments in the case of an accused who has been admitted to bail as it would in the case of an accused who has been formally committed to jail under form 17.

Mr. Hogarth: Except that you get involved in problems such as on what offence was he committed for trial? The jockey case—the extortion case—is a prize example of this. I will not labour it, Mr. Chairman, we want to get on, but I think it is something that should be given some further consideration.

Mr. Turner (Ottawa-Carleton): We will certainly take note of that.

Clause 34 agreed to.

On Clause 35.

Mr. Hogarth: One moment, please.

Mr. Turner (Ottawa-Carleton): I might say, Mr. Chairman, that anything that is being said here by members of the Committee is being considered on a daily basis by the Department and it is being digested for future reference. I did not want any member of the Committee to feel that if all his amendments were not accepted that very close attention was not being paid to the words.

The Chairman: Shall Clause 35 carry?

Mr. Hogarth: One moment, please. In light of the fact that everything is being listened to we might as well bring everything up.

The Chairman: I think you have listened very admirably so far. Mr. McCleave?

Mr. McCleave: Is the purpose behind it simply to provide for those cases where the

[Interpretation]

vies et sans le moindre doute, si l'accusé veut contester la validité du renvoi par recours au privilège, la simple absence d'un mandat de dépôt, formule 17, ne fera aucune différence.

M. Hogarth: Sauf que toutes les procédures relatives à l'*habeas corpus* se sont fondées sur le mandat de dépôt, naturellement et je crois qu'un *certiorari* se fonderait sur une ordonnance semblable. Ce que j'en dis, c'est que lorsqu'on abolit le renvoi, on le remplace l'ordonnance de la Cour portant qu'il a été renvoyé pour subir son procès. Peut-être que ce n'est pas la peine de poursuivre, mais cela posera des difficultés tôt ou tard.

M. Scollin: Je ne pense pas que de simples détails ou formalités de cette nature empêcheront les tribunaux d'écouter les mêmes arguments dans le cas d'un accusé à qui l'on a accordé la liberté provisoire, que dans le cas d'un accusé qui a été envoyé officiellement en prison, selon la formule 17.

M. Hogarth: Sauf que vous avez le problème de savoir pour quel délit il a été envoyé à son procès? Le meilleur exemple qu'on puisse donner est celui du cas du jockey—le cas d'extorsion—je n'insisterai pas, monsieur le président, car nous voulons avancer, mais je pense qu'il faudrait continuer à étudier cette question.

M. Turner (Ottawa-Carleton): Nous en tiendrons compte.

L'article 34 est adopté.

L'article 35.

M. Hogarth: Un moment s'il vous plaît.

M. Turner (Ottawa-Carleton): Je tiens à dire, monsieur le président, que tout ce qui se dit ici par les membres du Comité, est étudié quotidiennement par le Ministère et nous en tiendrons compte. Je voulais que les membres du Comité sachent que, même si leurs amendements ne sont pas acceptés, on en tient beaucoup compte.

Le président: L'article 35 est-il adopté?

M. Hogarth: Un moment, s'il vous plaît. Je suis très content qu'on écoute tout ce qu'on a à dire, alors c'est aussi bien de dire tout ce qu'on veut dire.

Le président: Je pense que vous avez très bien écouté jusqu'ici. Monsieur McCleave?

M. McCleave: Est-ce que le but de cet article est simplement de prévoir les cas où l'ac-

[Texte]

accused decided he wanted to plead guilty when he reached the higher court?

Mr. Turner (Ottawa-Carleton): No, that is just one of the cases. The real purpose is to provide statutory authority for the waiving of a preliminary inquiry and the proceedings may be dispensed with immediately or at any time during the hearing. There is some conflict of authority here. As a matter of fact, if the preliminary inquiry has been waived just as a matter of practice the Code does not say it can be done and the Code does not say it cannot be done, and this is just to clarify the situation.

Mr. Hogarth: Before we leave this, Clause 35 relates to where he consents to being committed without a preliminary hearing.

Mr. Turner (Ottawa-Carleton): Right.

Mr. Hogarth: I invite you to consider a consequential amendment to Section 478, which deals with the counts that may be included in an indictment, and particularly Section 478(2)(b), which says that the prosecutor may join an indictment on:

counts relating to offences disclosed by the evidence taken on the preliminary inquiry, in addition to or in substitution for any offence for which the accused was committed for trial.

It would appear to me that if he is committed for trial on a rape charge by consent he has to be tried on the rape charge. Is that right?

Mr. Christie: Yes, that is correct.

Mr. Hogarth: So if he is committed for trial on a carnal knowledge charge by consent, the prosecutor in the higher court could not prefer a rape indictment without the approval of the attorney general, and so on. Is that your view?

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Mr. Scollin: That is right. This is one of the reasons the consent of the Crown is provided for there. The Crown has to take the chance that he goes forward on the count on which he is committed and the Crown is stuck with it.

Mr. Hogarth: I think you should bear in mind that very often Crown counsel at the preliminary hearing is not counsel at the trial, and the Crown counsel at the preliminary hearing will be pretty quick to accept the consent to get rid of the preliminary.

[Interprétation]

cusé décide de plaider coupable face à un tribunal supérieur?

M. Turner (Ottawa-Carleton): Non, ce n'est là qu'un des cas. Le but réel est de donner l'autorité statutaire pour éliminer l'enquête préliminaire et l'on peut supprimer les procédures immédiatement ou en tout temps au cours de l'audience. Il y a ici conflit d'autorité. De fait, si l'enquête préliminaire a été éliminée seulement pour raison pratique, le Code ne dit pas que cela peut se faire ou ne peut pas se faire. C'est seulement pour clarifier la situation.

M. Hogarth: Avant de terminer, l'article 35 a trait à l'accusé qui consent à être renvoyé à son procès sans audience préliminaire.

M. Turner (Ottawa-Carleton): C'est exact.

M. Hogarth: Je vous invite à examiner une modification, il y aurait conséquence à l'article 478, qui traite des chefs qui peuvent être inclus dans un acte d'accusation, et en particulier l'article 478(2)(b), qui dit que le procureur de la Couronne peut rattacher un acte d'accusation à:

des chefs portant sur des infractions révélées par les témoignages recueillis à l'enquête préliminaire, en sus ou en remplacement d'une infraction à l'égard de laquelle le prévenu a été renvoyé pour subir son procès.

S'il y a un consentement d'accepter le procès pour raison de viol, il doit être jugé sous ce chef. Est-ce exact?

M. Christie: Oui, c'est exact.

M. Hogarth: Alors, si l'inculpé consent à être renvoyé à son procès sous une accusation de rapports sexuels, la poursuite devant la cour supérieure ne pourrait être faite selon une accusation de viol sans l'approbation du procureur général, etc. Est-ce votre avis?

M. Scollin: C'est exact. Oui, c'est pour cela que le consentement de la Couronne est prévu à cet article. La Couronne doit prendre la chance de poursuivre sous le chef pour lequel l'accusé est renvoyé à son procès et la Couronne est alors responsable de son accusation.

M. Hogarth: Je pense qu'il faut tenir compte que l'avocat de la Couronne à l'audience préliminaire n'est pas toujours celui qui assiste au procès et l'avocat de l'audience préliminaire acceptera le consentement rapidement pour s'en débarrasser.

[Text]

Mr. Scollin: I know in your province he is not, but in a lot of provinces the committing Crown is the Crown at the trial.

Mr. Turner (Ottawa-Carleton): The point is that Crown counsel who took over at the trial would be forestalled from...

Mr. Hogarth: Putting in a rape indictment.

Mr. Turner (Ottawa-Carleton): ... initiating a charge which is different from the one for which the preliminary inquiry has been held.

Clauses 35 to 37 inclusive agreed to.

On Clause 38.

Mr. Hogarth: Does Clause 38 deal with a re-election after the preliminary hearing?

Mr. Turner (Ottawa-Carleton): Yes.

Mr. Hogarth: Mr. Minister, would you make a statement on the policy behind that? Suppose an accused in the first instance had the opportunity to elect the method of trial he wished to be tried by and chose to have a trial by judge without a jury. He then has a preliminary hearing and after that hearing he decides that he made a mistake in his first election and wants to go back down again. I understand he can now re-elect to be tried by the magistrate.

Mr. Turner (Ottawa-Carleton): You want to know the policy and purpose of this which will permit...

Mr. Hogarth: Yes, having had the option in the first place.

Mr. Turner (Ottawa-Carleton): ...an accused who has elected trial by a judge without a jury to re-elect or reconsider trial by a magistrate without a jury. We believe this is consistent with the present provision in Section 475.

Mr. Hogarth: As between a jury trial and a trial by judge. I appreciate that.

Mr. Turner (Ottawa-Carleton): That is right. Section 475 of the Code provides for re-election before a judge without a jury after you have elected to be tried by a judge with a jury. We are amending Section 475 as well. This is just consequential, Mr. Hogarth, to the provisions concerning election.

Mr. Hogarth: I appreciate that, sir, except that having had the...

[Interpretation]

M. Scollin: Je sais que dans votre province, ce n'est pas le même, mais dans beaucoup de provinces, c'est le même avocat qui renvoie au procès et qui assiste au procès.

M. Turner (Ottawa-Carleton): Le point est que le procureur de la Couronne qui prendrait la relève au procès serait prévenu...

M. Hogarth: De ne pas porter une accusation de viol.

M. Turner (Ottawa-Carleton): ... de ne pas porter une accusation qui soit différente de celle qui a fait l'objet de l'enquête préliminaire.

Le président: Les articles 35 à 37 inclusive-ment sont adoptés.

Sur l'article 38.

M. Hogarth: L'article 38 a-t-il trait à un nouveau choix après l'enquête préliminaire?

M. Turner (Ottawa-Carleton): Oui.

M. Hogarth: Monsieur le ministre, est-ce que vous me diriez quel est le principe de cet article? Supposons qu'un prévenu, en première instance, a l'occasion de choisir le mode de jugement par lequel il désire être jugé, et qu'il choisisse d'être jugé par un juge sans jury. L'audience préliminaire a alors lieu, et après l'audience, il estime qu'il s'est trompé dans son premier choix et veut revenir en arrière. Il peut maintenant choisir de nouveau d'être jugé par le magistrat, n'est-ce pas?

M. Turner (Ottawa-Carleton): Vous voulez savoir le principe et le but de ce qui permettra...

M. Hogarth: Oui. Puisqu'il a eu un premier choix.

M. Turner (Ottawa-Carleton): ... à l'accusé qui a choisi d'être jugé par un juge sans jury, de revenir sur sa première décision et de choisir d'être jugé par un magistrat sans jury. C'est parfaitement logique et conforme à la disposition de l'article 475 actuel.

M. Hogarth: Comme entre un procès avec jury et un procès par un juge. Je comprends cela.

M. Turner (Ottawa-Carleton): C'est exact. L'article 475 du Code prévoit un nouveau choix pour être jugé par un juge sans jury alors qu'on avait d'abord choisi d'être jugé par un juge sans jury. Nous modifions aussi l'article 475. C'est simplement un amendement qui est conséquent, monsieur Hogarth, aux dispositions qui concernent le choix.

M. Hogarth: Je comprends cela, monsieur, mais...

[Texte]

Mr. Turner (Ottawa-Carleton): And you are aware that it is an across-the-board consent, there is no limitation on time.

Mr. Hogarth: But there must be consent of the attorney general or counsel.

Mr. Turner (Ottawa-Carleton): Yes, the Crown retains control of the proceedings in that sense.

Mr. McQuaid: Why is that, Mr. Chairman? I understand if he first elects to be tried by a magistrate and then wishes to re-elect to be tried by a judge and jury that there is some justification for the Attorney General having to give his consent because there are extra costs involved on the part of the Crown, why should he need the consent of the Attorney General when he re-elects to be tried by the magistrate?

Mr. Hogarth: There is more than one accused.

Mr. Turner (Ottawa-Carleton): I guess it is almost for the very reason you suggest, Mr. McQuaid. The public has already been put to the expense of setting up the higher order of trial and the Attorney Generals' consent has already been obtained and the Attorney General ought to have a chance to review it. The public has already been put to a good deal of expense in having a preliminary inquiry and in having agreed to the first option. This is the rationale behind it.

Mr. Hogarth: Is it not also, Mr. Minister, that where four accused appear before a magistrate and three of them want a trial by jury and one wants to go before a judge that the magistrate may order all four to go before the jury?

Mr. Turner (Ottawa-Carleton): Yes.

Mr. Hogarth: They all get before the jury and then one accused decides he wants to go back before the magistrate, so naturally you have to have some control of the proceedings

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or one by one they will drift back to the magistrate and plead guilty or encumber the courts with four separate trials.

Mr. Turner (Ottawa-Carleton): Yes, that is right.

Mr. Hogarth: And the consent of the Attorney General is required in order to control that situation.

[Interprétation]

M. Turner (Ottawa-Carleton): Et vous savez que c'est un consentement unanime. Remarquez, qu'il n'y a pas de limite de temps.

M. Hogarth: Mais il faut quand même l'autorisation du Procureur général ou de l'avocat.

M. McQuaid: Monsieur le président, comment se fait-il, lorsque l'accusé a déjà choisi ce sens.

M. Turner (Ottawa-Carleton): Oui, la Couronne garde le contrôle des procédures dans d'être jugé par un magistrat, puis qu'il choisit d'être jugé par un juge devant jury, que le procureur général doit donner son consentement, puisque cela comporte des frais supplémentaires pour la Couronne. Pourquoi aurait-il besoin de l'autorisation du procureur général lorsqu'il choisit de nouveau d'être jugé par un magistrat?

M. Hogarth: Il y a plus d'un accusé?

M. Turner (Ottawa-Carleton): Probablement, exactement pour la raison que vous avez indiquée, monsieur McQuaid. Le public a déjà fait face à des dépenses pour ordonner un procès qui coûte plus cher et le consentement du procureur général a déjà été obtenu. Le procureur général devrait avoir la chance de revenir sur sa décision. L'administration publique a déjà subi des frais élevés à l'égard de l'enquête préliminaire et pour avoir consenti au premier choix. Voilà la raison.

M. Hogarth: Oui, mais monsieur le ministre, s'il y avait quatre accusés traduits devant un magistrat, et que trois seulement veuillent être jugés par un jury et que le quatrième veuille être jugé par un juge, le magistrat peut-il ordonner que les quatre soient traduits devant un jury?

M. Turner (Ottawa-Carleton): Oui.

M. Hogarth: Bon. Alors ils arrivent tous devant le jury, puis l'un des prévenus décide qu'il voudrait revenir devant un magistrat. En conséquence, il vous faut rester

maître de la procédure, faute de quoi ils reviendront un par un devant le magistrat pour plaider coupable, et encombreront les tribunaux avec quatre procès différents.

M. Turner (Ottawa-Carleton): C'est exact.

M. Hogarth: Et c'est pourquoi il faut le consentement du Procureur général pour contrôler cette situation.

[Text]

Mr. Turner (Ottawa-Carleton): That is right.

Clause 38 and 39 agreed to.

On Clause 40—Proceedings on re-election to be tried by magistrate without jury.

Mr. Hogarth: The situation which concerns me here is where the accused has gone back down again. Is this not where he comes back before the magistrate?

Mr. Turner (Ottawa-Carleton): That is right.

Mr. Hogarth: It says:

(a) the accused shall be tried upon the information that was before the justice at the preliminary inquiry, subject to any amendments thereto that may be allowed by the magistrate by whom the accused is tried;

Now I take that to be an amendment to the count in the indictment with which he is faced. But the beautiful thing that you escape by going back down again is all the alternate offences that might have been revealed at the preliminary hearing, which could normally be joined in the upper court.

Mr. Turner (Ottawa-Carleton): If the situation such as you describe, Mr. Hogarth, were to obtain the Crown would not consent, would it?

Mr. Hogarth: No. But unfortunately the consent might well be obtained on the basis that it is practical to go back, and in our province where you have an upper court prosecutor and a lower one, the upper one is only concerned with his trial list and he will telephone the lower court prosecutor and say, "Do you want him back" and he says "Sure". So he comes back and he finds that he cannot have these counts. Now surely in order to avoid that it would be wise to put the provision in that they can have such other counts as are revealed at the preliminary hearings.

Mr. Turner (Ottawa-Carleton): I know you have a particular situation in British Columbia where you may have one prosecutor in charge of the trial list and one in charge of the preliminary inquiry list. They are going to have to read the bill and they are going to have to communicate—that is all.

Mr. Hogarth: I appreciate that but you could do the communication so easily here.

Mr. Turner (Ottawa-Carleton): The boys are going to have to get together in British Columbia.

[Interpretation]

M. Turner (Ottawa-Carleton): C'est exactement cela.

Les articles 38 et 39 sont adoptés.

A l'article 40 Procédures après exercice d'un nouveau choix pour être jugé par un magistrat sans jury.

M. Hogarth: Ce qui me préoccupe, c'est lorsque le prévenu se présente à nouveau devant le magistrat. N'est-ce pas à ce moment qu'il revient devant le magistrat?

M. Turner (Ottawa-Carleton): C'est juste.

M. Hogarth: Le texte dit:

a) le prévenu doit être jugé sur la dénonciation qui était devant le juge de paix lors de l'enquête préliminaire, sous réserve de toutes modifications à celle-ci que peut permettre le magistrat par qui le prévenu est jugé;

Alors, je pense que ceci équivaut à un amendement des chefs d'accusation contre le prévenu. Car, en revenant sur sa décision, il évite tous les délits qui auraient pu être révélés à l'enquête préliminaire et repris en Cour supérieure.

M. Turner (Ottawa-Carleton): Dans une situation semblable, la Couronne refuserait, n'est-ce pas?

M. Hogarth: Malheureusement, on pourrait obtenir le consentement parce qu'il est facile de retourner en arrière. Dans une province où il y a deux tribunaux, la Cour supérieure se préoccupe de sa liste de procès seulement et, si elle veut retourner en arrière, elle renverra la cause au procureur de la Cour inférieure. C'est alors qu'on constatera qu'on ne peut avoir les mêmes chefs d'accusation.

Alors, pour éviter cela, devrait-il y avoir des dispositions qui permettraient d'introduire les délits révélés à l'enquête préliminaire?

M. Turner (Ottawa-Carleton): Je vois que c'est un cas particulier à la Colombie-Britannique où il peut y avoir un avocat chargé des enquêtes et un autre chargé du procès. Ils devront lire le bill et s'entretenir entre eux.

M. Hogarth: Je comprends très bien, monsieur le ministre, mais ce serait si facile de le faire ici.

M. Turner (Ottawa-Carleton): Il faudra en discuter en Colombie-Britannique.

[Texte]

Clause 40 agreed to.

Clauses 41 to 43 agreed to.

On Clause 44—Indictment not to be preferred except with consent of judge or by Attorney General.

Mr. Murphy: I want to make sure that I understand correctly the intent of the proposed amendment. I quote:

- (a) a preliminary inquiry has not been held, or
- (b) a preliminary inquiry has been held and the accused has been discharged, a bill of indictment shall not be preferred except with the written consent of a judge...

That would be a Supreme Court judge or a District Court judge.

... or by the Attorney General...

without consent. Does "Attorney General" include a crown attorney?

Mr. Turner (Ottawa-Carleton): Him, personally.

Mr. Murphy: It is not spelled out that way, Mr. Minister. Going back to Section 2, the definition section, "Attorney General" is Attorney General or his agent. It states that "Attorney General" includes the lawful deputy of the said Attorney General.

Mr. Turner (Ottawa-Carleton): Yes, but read it through, Mr. Murphy.

Mr. Murphy: I am sorry. Thank you.

The Chairman: Shall Clause 44 carry?

Mr. Turner (Ottawa-Carleton): I think it ought to be clear for the record that there are exceptions to the delegation in that definition

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section. Those exceptions are Section 487 Subsection (4) and Section 489 subsection (3) which are the sections we are dealing with. So this must be exercised by the Attorney General personally.

Mr. Chappell: Mr. Chairman, I am going to ask that this section stand until the next meeting. If not, I shall speak to it. My reason for asking that it be stood is this. I meant to bring up a point of policy and to perhaps make a point or two myself. I have discussed this with Mr. Harry Walsh, one of the leading criminal lawyers in Canada. He is Chairman of the Criminal Justice Section. He took the trouble to send down a fairly lengthy letter with some cases. I have just received those

[Interprétation]

L'article 40 est adopté.

Les articles 41 à 43 sont adoptés.

Article 44 L'accusation ne peut être intentée qu'avec le consentement d'un juge ou par le procureur général.

M. Murphy: Je voudrais être sûr de bien comprendre le but de l'amendement. Je cite:

Lorsque

- a) une enquête préliminaire n'a pas été tenue, ou que
 - b) une enquête préliminaire a été tenue et que le prévenu a été libéré
- une accusation ne peut être intentée qu'avec le consentement par écrit d'une cour...

Ceci veut dire un juge de la Cour suprême ou de la Cour de district.

... ou que par le procureur général..

Est-ce que «procureur général» comprend l'avocat de la Couronne?

M. Turner (Ottawa-Carleton): Lui précisément.

M. Murphy: Ce n'est pas exprimé de cette façon-là, monsieur le ministre. Si je reviens à l'article 2 qui donne les définitions, «procureur général» veut dire le procureur général ou son représentant. L'article stipule que «procureur général» comprend le substitut légitime desdits procureur général,...

M. Turner (Ottawa-Carleton): Lisez-le en entier.

M. Murphy: Vous avez raison. Merci.

Le président: L'article 44 est-il adopté?

M. Turner (Ottawa-Carleton): Je voudrais préciser qu'il y a des exceptions aux délégations de pouvoirs mentionnés dans l'article

des définitions. Il y a les articles 47 (4) et 49 (3) que nous étudions maintenant. Ce pouvoir est exercé par le procureur général lui-même.

M. Chappell: Je voudrais que l'on réserve cet article jusqu'à la prochaine réunion. Sinon je l'aborderai. Je demande qu'on réserve l'article parce que je voudrais présenter un point de politique et ajouter quelques commentaires moi-même. J'en ai parlé à M. Harry Walsh, un des plus grands criminalistes au Canada. Il est le président de la Section du droit criminel. Il s'est donné la peine de m'envoyer une longue lettre dans laquelle il mentionne certaines causes. J'ai reçu la lettre

[Text]

today and I have given a copy to Mr. Scollin. I was wondering if it could stand until both of us could read these notes to see if there is something that might affect our decision.

Mr. Turner (Ottawa-Carleton): We were agreeable to having it stand.

Clause 44 stood.

On Clause 45—Indictment not to be preferred except with consent of judge or by Attorney General.

Mr. Hogarth: Clause 45 is another instance where we in British Columbia do not get together.

It is the same thing. Clause 44 applies to grand jury proceedings in Ontario. Clause 45 applies to the situation in other provinces where there are no grand juries. The same observation that Mr. Chappell has made on one applies to the other. I have some objections to this clause that I would like to raise but Mr. Chappell might raise them for me in the other one.

Clause 45 stood.

On Clause 46—Plea of guilty to included or other offence.

Mr. Hogarth: What is meant by an "other offence" in Clause 46? It reads, "but guilty of an included or other offence". Should it not be a lesser offence?

Mr. Christie: No. The words "included or other offence" is deliberate. There may be a situation where another offence is related quite closely but not included within the law and it is considered that under those circumstances that offence might be an offence to which the plea could be taken.

Clause 46 agreed to.

On Clause 47—Court shall assign counsel.

Mr. Hogarth: I have just one observation on Clause 47. This deals with the insanity section.

The Chairman: Yes.

Mr. Turner (Ottawa-Carleton): Can we perhaps deal with insanity when we are a little fresher.

Mr. Hogarth: When we are a little saner.

[Interpretation]

ce matin et j'en ai remis une copie à M. Scollin. J'aimerais que l'on puisse réserver cet article pour nous permettre de lire ces observations car certaines pourraient modifier notre décision.

M. Turner (Ottawa-Carleton): Nous acceptons de le réserver.

L'article 44 est réservé.

Article 45—L'accusation ne peut être intentée qu'avec le consentement d'un juge, ou par le procureur général.

M. Hogarth: Les gens de la Colombie-Britannique s'opposent à l'article 45 aussi. L'article 44 s'applique au grand jury d'Ontario, l'article 45 s'applique à la même situation dans d'autres provinces où il n'y a pas de jury. Les observations de M. Chappell s'appliquent aux deux cas. Je m'oppose à l'article 45, mais M. Chappell fera peut-être les mêmes objections sur l'autre article.

L'article 45 est réservé.

Article 46

Plaidoyer de culpabilité de l'infraction incluse ou d'une autre infraction.

M. Hogarth: Que veut-on dire par «autre infraction» à l'article 46. Il se lit: «mais plaide coupable pour une infraction incluse ou pour une autre infraction». Faudrait-il dire une infraction moindre?

M. Christie: L'expression «incluse ou pour une autre infraction» est voulue. Il peut se produire une situation où une autre infraction s'y rattache de très près mais sans être incluse dans la loi. Nous considérons que l'on pourrait alors entamer des procédures.

L'article 46 est adopté.

Article 47. La cour doit désigner un procureur.

M. Hogarth: J'ai une seule observation à faire sur l'article 47. Elle a trait à la section sur l'aliénation.

Le président: Oui.

M. Turner (Ottawa-Carleton): Pourrions-nous traiter de ces questions d'aliénation quand nous aurons l'esprit un peu plus frais?

M. Hogarth: Quand nous serons tous un peu plus sains d'esprit.

[Texte]

Mr. Turner (Ottawa-Carleton): When we are a little saner, yes. I think that I would like to make an opening statement at the right occasion on the insanity clauses. They are Clauses 47, 48, 55, 56, 60, 63, 64 and 65. I would like to stand those and deal with them as an entity.

Clauses 47, 48, 55, 56, 60, 63, 64 and 65 stood.

Clauses 49 and 50 agreed to.

On Clause 51—Trial may continue.

Mr. Hogarth: This has occurred in a number of cases, Mr. Minister, that I have been involved in and I notice that you have now deleted the consent of the accused. Is that correct?

Mr. Turner (Ottawa-Carleton): Yes sir.

Mr. Hogarth: To my mind, sometimes an accused will select a jury on the basis that there is just one or two members that he wants on there, and quite properly so, and he exercises his challenges in such a way as to get certain people on the jury from the panel. This is quite within his prerogative to do so. Now we find ourselves in the position that if one of them takes sick the judge can order the trial to proceed without the consent of the accused—and it may be one of those persons he was relying on.

Mr. Scollin: He ought not to surely rely on an initially biased juror.

Mr. Hogarth: Why not? He only needs one. Under our eminent jury system it might be his mother and there is no way you would ever know. We have probably the worst method of selection of jurors in modern criminal jurisprudence, and I do not see why we are taking this particular advantage from an accused person; there are not that many of them built in there.

If you want to go into the jury system perhaps we could couple it with the insanity sections because there are some things in it which are absolutely insane.

Mr. Christie: There is no doubt that is an area of the Criminal Code that can stand examination and probably will receive examination in due course.

Mr. Hogarth: I hope so.

The Chairman: Shall Clause 51 carry?

[Interprétation]

M. Turner (Ottawa-Carleton): J'aimerais faire une déclaration immédiatement sur les articles traitant de l'alinéation. J'aimerais réserver les articles 47, 48, 55, 56, 60, 63, 64 et 65 et les étudier comme une seule entité.

Les articles 47, 48, 55, 56, 60, 63, 64 et 65 sont réservés.

Les articles 49 et 50 sont adoptés.

Article 51. Le procès peut continuer.

M. Hogarth: Monsieur le ministre, je remarque que vous avez maintenant enlevé la clause au sujet du consentement de l'accusé. Est-ce juste?

M. Turner (Ottawa-Carleton): Oui.

M. Hogarth: Parfois l'accusé opte pour un jury pour avoir une ou deux personnes sur le jury. C'est son droit et il l'exerce de façon à obtenir ces personnes. Maintenant, si l'une de ces personnes est malade, le juge peut ordonner que le procès continue sans le consentement de l'accusé.

M. Scollin: Il ne devrait certainement pas se fier à un jury dont le jugement est fait d'avance.

M. Hogarth: Pourquoi pas? Il n'a besoin que d'une personne.

D'après notre système de jury, ce pourrait être sa mère et il n'y aurait pas de façon de le savoir. Nous avons probablement la pire manière de choisir les jurés, de toute la jurisprudence moderne. Et je ne vois pas pourquoi nous retirons cet avantage d'une personne accusée, parce qu'il n'y a pas beaucoup de protection dans la Loi, pour elle.

Et, si vous étudiez le système de jury, peut-être que nous pourrions étudier cela en même temps que les articles sur la démence, parce que ce sont des choses qui se rapportent l'une à l'autre.

M. Christie: Sans doute, il y a des domaines, dans le Code criminel, qu'il faudrait étudier plus à fond, et on le fera en temps et lieu.

M. Hogarth: Je l'espère.

Le président: L'article 51 est-il approuvé?

[Text]

Mr. Hogarth: Just one moment please, Mr. Chairman. I want to know why we have deleted the consent of the accused to the proceeding with less than 12 jurors.

Mr. Scollin: Well, it has happened. Indeed it might have happened, Mr. Hogarth, on the Seaboard-Add Fuel trial, the Shortridge, and others which you were on for day after day after day after day.

Mr. Hogarth: You know what happened in *Regina versus Harrison*?

Mr. Scollin: No, but I say it might have happened on that Seaboard-Add fuel case you were on where there were days and days of trial. On the last day, just as you were about to do your summing up for the Crown, a juror fell sick in the box and died and at that point, at enormous public expense, you were forced to go back to the very beginning again.

The idea of this is that the judge, exercising a proper judicial discretion, can in fact order the jury to be re-constituted and the trial to start. Perhaps in a case like that he would not exercise that discretion, but certainly at the outset of a trial one would expect that judge would say, "Well, to be fair to everybody we will have a full-man jury. We will discharge this jury and re-impanel a jury." But if the only use that the consent of the accused was being put to was to preserve his grandmother or some relative on the jury, then I think that anybody, defence counsel or Crown counsel would concede that this was not a very nice thing to do, and it ought not to be part of the jury system.

Mr. Hogarth: Well, it is part of it and while it is we might as well go along with it. The point is that you are depriving an accused of a trial by a jury selected by him in the sense that certain jurors, through no fault of his, are off the panel and it appears to me that he should have the right to have a new jury impanelled, and I do not care how long the trial takes. Surely is not the criterion; the criterion is justice to the accused.

Mr. Christie: But it must be borne in mind that this involves the exercise of judicial discretion as well, and if the defense counsel can make out any kind of reasonable case that he is going to suffer some improper prejudice, surely he is going to be able to persuade the court not to exercise its discretion against him.

Mr. Hogarth: But I do not think the defense counsel should have to convince the court which jurors he might want on that panel. That is all I say.

[Interpretation]

M. Hogarth: Un moment, s'il vous plaît, monsieur le président. Je voudrais savoir pourquoi nous avons enlevé le droit de l'accusé à consentir au procès quand le nombre des jurés est de moins de douze?

M. Scollin: C'est déjà arrivé, dans le cas des procès Seaboard-Add Fuel, Shortridge et autres, qui ont duré des jours et des jours.

M. Hogarth: Vous savez ce qui est arrivé lors du procès Regina contre Harrison?

M. Scollin: On a perdu des jours et des jours au cours du procès Seaboard-Add Fuel, et le dernier jour, alors que vous étiez en train de faire votre adresse à la Couronne, un membre du jury est décédé et vous avez été forcé de recommencer dès le début.

L'idée, c'est que le juge exerce sa propre juridiction et peut ordonner que le procès s'arrête, pour qu'on puisse former un nouveau jury avant que le procès continue. Il ne le ferait peut-être pas, dans un tel cas, mais au début du procès, le juge peut dire qu'il faut qu'il y ait un jury complet. Si la seule utilité du consentement de l'accusé était de faire inclure sa mère ou sa grand-mère dans le jury, cela ne serait pas bien.

M. Hogarth: Cela existe et il faut l'accepter. On empêche l'accusé d'obtenir un procès devant un jury choisi par lui-même, parce que, parfois, certains jurés, sans qu'il en soit de sa faute, ne font pas partie du jury, et il me semble qu'il devrait avoir le droit d'avoir un nouveau jury, et il importe peu combien de temps le procès prend, cela n'est pas le critère important, le critère, c'est la justice qu'on doit rendre à l'accusé.

M. Christie: Il ne faut pas oublier que cela implique aussi la juridiction, la discrétion du juge. Si l'avocat de la défense peut prétendre qu'il va subir quelques préjudices, il peut persuader le juge de ne pas exercer sa discrétion contre lui.

M. Hogarth: Je ne pense pas que l'avocat de la défense soit obligé de convaincre la cour quant aux jurés qu'il aimerait voir faire partie du jury. C'est tout ce que j'ai à dire.

[Texte]

The Chairman: Mr. Chappell?

Mr. Chappell: I have another point which Mr. Hogarth might consider with that argument. If that person on the jury is so important to him and he must consent, that person could get ill the day before and destroy the proceedings at the will. I think it would be very dangerous indeed if you had to have his consent. One person on the jury could destroy the trial by some subjective sickness.

Mr. Hogarth: Well, he can do it now.

Mr. Chappell: Yes, now—but with this amendment that person would not be able to.

Mr. Hogarth: What are the cases that brought this up? Have you any.

Mr. Turner (Ottawa-Carleton): This was recommended first of all as long ago as 1960 by the criminal justice section of the British Columbia section of the Canadian Bar Association.

Mr. Hogarth: I would not take the responsibility for that at the moment.

Mr. Turner (Ottawa-Carleton): They submitted the following resolution in 1960:

Be it resolved that Section 553, subsection 2 of the Criminal Code be amended by striking out the words, "if the prosecutor and the accused consent in writing."

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The matter was taken up at the 1960 meeting of the criminal law section of the Uniformity Commission on the uniformity of legislation. The Commissioners recommended no action. At the 1965 meeting of the Commissioners, those are the representatives of the attorneys general of the provinces, it was recommended that Section 553 be amended along the lines of the United Kingdom bill by substituting the number 10 for the number 9. So as long as it does not go below 10 it could be done at the discretion of a judge but without the consent of the prosecutor or the accused.

At the inaugural meeting of the Conference of Chief Justices of Canada—chief justices of all the trial and appellate divisions in Canada—held November 16-18, 1964, Chief Justice Gale of Ontario was of the opinion that the requirement of the necessity for the consent of both counsel before proceeding with less than 12 jurors should be removed from the Criminal Code.

[Interprétation]

Le président: Monsieur Chappell?

M. Chappell: Un autre point que M. Hogarth pourrait considérer en même temps, c'est que si ladite personne qui fait partie du jury est tellement importante pour lui, alors il doit consentir. Cette personne-là peut tomber malade et faire tomber toute la procédure. Je pense que ce serait très dangereux de permettre ce consentement. Un membre du jury pourrait interrompre le procès en se déclarant malade.

M. Hogarth: Il peut le faire actuellement.

M. Chappell: Mais avec cette modification, cette personne ne pourrait pas faire cela.

M. Hogarth: Quelles sont les causes qui ont motivé cette terminologie? Avez-vous...

M. Turner (Ottawa-Carleton): En 1960, la section de la Colombie-Britannique de l'Association du barreau canadien a proposé cela, en premier lieu.

M. Hogarth: Je ne voudrais pas en prendre la responsabilité pour le moment.

M. Turner (Ottawa-Carleton): Ils ont proposé la résolution suivante en 1960. Il est résolu

que l'article 553, paragraphe (2) du Code criminel soit modifié en retranchant les mots: «si le poursuivant et l'accusé y consentent par écrit».

La section de droit criminel de la Commission d'uniformisation a aussi fait cette recommandation en 1960. La Commission d'uniformisation des lois n'a pas recommandé de mesure, mais à la réunion de 1965, les représentants des procureurs généraux des provinces ont recommandé que l'article 553 soit modifié conformément à la Loi britannique en substituant le nombre neuf au nombre dix. Lorsque le nombre des jurés est de moins de dix, la question est laissée à la discrétion du juge. A la Conférence des juges en chef du Canada du 16 au 18 novembre 1964, le juge en chef Gale, d'Ontario, a recommandé que l'on enlève cet article du Code criminel.

A leur conférence de Québec, les juges en chef ont encore recommandé que le Code criminel soit modifié pour tenir compte de ces considérations. Le juge doit être satisfait. De fait, l'absence d'un juré pour cause de maladie pourrait constituer une injustice envers l'accusé lui-même. Nous pensons que cela donne plus de flexibilité, mais que l'on laisse la question à la discrétion du juge. Mais nous nous fions au jugement du juge.

[Text]

The chief justices again, at their conference in Quebec City when I was there in November, 1968 recommended that the Code be amended to delete this requirement of consent so that the trial would continue provided the jury was not reduced below ten members. This obviously contemplates that the judge must be satisfied that no injustice will be done to the accused. As a matter of fact, because one juror did fall ill or was incapacitated, and the trial had to be re-constituted it might well be quite an injustice to the accused to be subjected again to the same process.

This, we believe, gives us more flexibility in long processes at the discretion of the judge who, after all, will hear both parties before agreeing to it but will rely on his own discretion.

Clause 51 agreed to.

On Clause 52.

Mr. Hogarth: Mr. Minister, Clause 52 has been the common law prerogative of the right of the attorney general to reply and that has now been done away with. This is the effect of the amendment, is it not?

Mr. Turner (Ottawa-Carleton): I beg your pardon?

Mr. Hogarth: I was just asking—

Mr. Turner (Ottawa-Carleton): Sorry; we were just discussing the profundity of your words.

Mr. Hogarth: I have not said anything profound yet; do not hold your breath.

I am just suggesting to you, sir, that the right of reply of counsel on behalf of the Crown or counsel on behalf of the accused where the occasion arises should be in the discretion of the court. This is particularly so where when one of the counsel has inadvertently or—I hope not—advertently misquotes certain facts, distorts certain evidence or, what is worse, distorts the law, and that should be in the discretion of the court.

Mr. Turner (Ottawa-Carleton): It does not modify the discretion of the court one way or the other, in our submission. It just takes away the absolute entitlement of the attorney general to speak last.

Mr. Hogarth: Then your suggestion is that the judge still has a discretion to permit counsel to reply?

Mr. Turner (Ottawa-Carleton): Yes; he runs the trial the way he pleases in the interests of justice.

[Interpretation]

Nous croyons que cela nous donne plus de flexibilité quand il s'agit de longs procès où le juge doit d'abord entendre les deux parties avant de pouvoir rendre jugement.

L'article 51 est approuvé.

L'article 52.

M. Hogarth: L'article 52, monsieur le ministre, concerne cette prérogative de la «Common Law» qu'est le droit de réponse du procureur général. Maintenant, on enlève cette disposition. Si j'ai bien compris, c'est là l'effet de cet article, n'est-ce pas?

M. Turner (Ottawa-Carleton): Pardon?

M. Hogarth: Je demandais...

M. Turner (Ottawa-Carleton): Nous discutons la profondeur de vos paroles.

M. Hogarth: Je n'ai rien dit de profond encore.

Je suggère que le droit de réponse de l'avocat, au nom de la Couronne, ou au nom de l'accusé, soit laissé à la discrétion de la cour. Dans le cas où l'on a mal interprété certains faits, ou mal cité certaines personnes, ou, ce qui est plus grave, déformé la loi, on devrait laisser cela à la discrétion du tribunal.

M. Turner (Ottawa-Carleton): Cela ne modifie pas la discrétion de la Cour de quelque façon que ce soit, d'après nous. Cela ne fait qu'enlever au procureur général le droit de parler le dernier.

M. Hogarth: Selon vous, le juge a donc toujours la discrétion de laisser à l'avocat de la Couronne le droit de répondre?

M. Turner (Ottawa-Carleton): Oui. Il doit mener le procès comme il l'entend, pour servir les intérêts de la justice.

[Texte]

Clause 52 agreed to.

On Clause 53.

Mr. Gilbert: I have a question on Clause 53. The practice in places like Toronto is to have the list of the convictions on a yellow sheet which contrasts with the ordinary white sheet, and the practice of the Crown is to waive the yellow sheet listing the convictions, which is of extreme prejudice to the accused.

I think the Minister, recognizing the injustice to the accused, would want to correct this situation and direct that the colour of the conviction sheet be changed to white.

[Interprétation]

L'article 52 est approuvé.

L'article 53.

M. Gilbert: Monsieur le président, au sujet de l'article 53, la pratique, dans les endroits tels que Toronto, consiste à établir la liste des condamnations sur une feuille jaune qui fait contraste avec les feuilles blanches ordinaires. Et, la Couronne brandit cette feuille jaune, ce qui est tout au désavantage de l'accusé.

Je pense que le ministère devrait reconnaître cette injustice et remédier à la situation et donner des instructions pour que la couleur de cette liste d'accusation soit blanche, au lieu d'être jaune.

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Mr. Turner (Ottawa-Carleton): We will take that under advisement. Our problem here is that this depends very much on the rules established before the courts of the various provinces. We will take it under advisement and I am sure the Attorney General of Ontario will take judicial notice of your remarks, Mr. Gilbert. I see a good deal of merit in what you say.

Mr. Gilbert: Mr. Chairman, it is obvious that your next bill also will be an omnibus bill rather than the minibill you referred to in the House.

Mr. Turner (Ottawa-Carleton): Yes, there are a lot of things we have to pick up.

The Chairman: Shall Clause 53 carry?

Mr. Hogarth: I have one question. What is the need for the two certificates in the proposed Section 574?

Mr. Scollin: The reason is because on certain occasions the same qualified examiner can, in fact, complete the two certificates. On other occasions a fingerprint examiner at a different location will be giving the second certificate on the basis on the reproduced fingerprints.

Mr. Hogarth: Could you give me a practical example? I am sorry; just take me through a case where two certificates would be filed in evidence.

Mr. Scollin: All right. A fingerprint examiner at the RCMP Identification Branch here—

Mr. Hogarth: Yes; he would issue one certificate.

Mr. Scollin: Yes, he can issue one certificate stating that he has compared the photo-

M. Turner (Ottawa-Carleton): Nous allons y penser. Le problème, c'est que cela dépend beaucoup des règlements établis dans les différentes cours des différentes provinces. Mais, nous allons penser à cela et je suis sûr que le procureur général de la province d'Ontario prendra bonne note de vos remarques, monsieur Gilbert, qui sont très valables.

M. Gilbert: Monsieur le président, il est évident que votre prochain projet de Loi sera aussi un bill omnibus, plutôt que le bill minibill dont vous avez parlé à la Chambre.

M. Turner (Ottawa-Carleton): Oui, il y a beaucoup de choses à considérer.

Le président: L'article 53 est-il approuvé?

M. Hogarth: J'ai une question. Pourquoi y a-t-il besoin de deux certificats dans 574?

M. Scollin: La raison, c'est que dans certaines occasions, le même examinateur compétent peut préparer les deux certificats. Et dans d'autres occasions, un examinateur des empreintes digitales exerçant ses fonctions à un autre endroit, donnera un deuxième certificat en se basant sur les empreintes digitales reproduites.

M. Hogarth: Pourriez-vous me donner un exemple pratique de cela? Citez-moi un cas où cela peut se produire.

M. Scollin: Très bien. Un examinateur des empreintes digitales appartenant à la Direction des identités de la Gendarmerie de la région...

M. Hogarth: Justement, est-ce qu'il émettrait un certificat?

M. Scollin: Oui. Il peut émettre un certificat disant qu'il a comparé la photocopie des

[Text]

copy of the prints with the prints on the record. He can send that out to Vancouver and then a fingerprint examiner there can give a second certificate, in the same way he can now appear in court and testify, stating that these fingerprints, which are certified to be the fingerprints of the person whose name appears on the record are, in fact, the fingerprints of this individual accused.

Mr. Hogarth: Yes, but somebody has to identify that accused in the courts.

Mr. Scollin: That is the only point where non-expert evidence will still be required. Somebody at some point will have to come in and testify, and it will be the local chap who originally took the prints, and he need not be a fingerprint expert. All he says, is "I put Blow's thumbs down on the piece of paper," and that is it. The rest can be accomplished either by one certificate if it is the same person who gives it or two, if that is more convenient.

Mr. McCleave: May I ask where the section or the subsection is that carries out the purpose of the last paragraph in the explanatory note opposite page 67 dealing with the accused's right with leave of the court? We have read through the proposed Section 574 and cannot find it there.

Mr. Scollin: Subsection (3) which appears on page 68 applies, to the certificates under this section, the provisions about notice and attendance that are contained in subsections (4) and (5) of the proposed Section 224A.

Mr. McCleave: Fine; thank you.

The Chairman: Shall Clause 53 carry?

Mr. Hogarth: That is the proposed Section 574 (1)?

The Chairman: Well, no; It was Clause 53.

Mr. Hogarth: Subsection (2) is already in Section 23 of the Canada Evidence Act, is it not? Is that not pretty well what that stands for? They are just about the same, are they not?

Mr. Christie: Mr. Hogarth, all we are carrying forward, I believe, in subsection (2) is the present Section 574 (b) of the Code relating to summary conviction matters.

• 1715

Mr. Hogarth: I appreciate that, but I am just saying that while we are amending this,

[Interpretation]

empreintes avec les empreintes contenues dans le dossier. Il peut envoyer cela à Vancouver, par exemple, et un examinateur des empreintes digitales de l'endroit peut émettre un nouveau certificat de la même façon que s'il témoignait devant une cour de justice maintenant, attestant que les empreintes digitales qui appartiennent, selon le certificat, à la personne qui est nommée dans le dossier, sont bien les empreintes de l'accusé.

Mr. Hogarth: Il faut cependant que quelqu'un identifie l'accusé en cour.

Mr. Scollin: C'est la seule partie de la preuve pour laquelle il faudra le témoignage d'un non-expert. Quelqu'un, à un moment donné, devra témoigner; ce sera la personne qui a pris les empreintes originales. Il peut ne rien connaître aux empreintes; il aura simplement à dire que c'est lui qui a pris ces empreintes digitales sur le papier, et c'est tout. Le reste peut être fait en se basant sur un certificat, si c'est la même personne qui l'a émis, ou deux si c'est plus commode ainsi.

Mr. McCleave: Puis-je savoir quel est l'article ou le paragraphe qui concerne l'application du dernier alinéa dans la note explicative de la page 67 concernant le droit de l'accusé à une autorisation de la cour? Nous avons lu tout l'article 574 et on ne peut rien trouver à ce sujet.

Mr. Scollin: Le paragraphe (3) que l'on trouve à la page 68, concerne l'application, pour les certificats visés par cet article, des dispositions parlant sur l'avis et la présence de ou des personnes remettant les certificats, dispositions qui sont contenues dans les paragraphes (4) et (5) de l'article 224A.

Mr. McCleave: C'est bien, merci.

Le président: L'article 53 est-il adopté?

Mr. Hogarth: Le nouvel article 574(1)?

Le président: Non, c'est l'article 53.

Mr. Hogarth: Le paragraphe (2) fait déjà partie de l'article 23 de la Loi sur la preuve au Canada, n'est-ce pas? N'est-ce pas à peu près la même chose?

Mr. Christie: Monsieur Hogarth, tout ce que nous conservons dans le paragraphe (2), c'est l'article 574(b) du Code qui se rapporte aux condamnations sommaires.

Mr. Hogarth: Pendant que nous modifions cet article pourquoi ne pas l'enlever tout sim-

[Texte]

why not get it out of there because it is already in Section 23 of the Canada Evidence Act?

Mr. Christie: We did not think it was doing any harm in the Code. It all has to do with identification of criminal records and we thought we might as well leave the package together.

Clause 53 agreed to.

On Clause 54—Sentence.

Mr. Hogarth: Mr. Chairman, Section 638 (1) is a new section that we are purporting to introduce. Is that not so?

Mr. Turner (Ottawa-Carleton): Yes, under Clause 75 concerning probation.

Mr. Hogarth: What is the disposition under that section?

Mr. Christie: Is that subsection (1) of the proposed new Section 638?

Mr. Hogarth: Yes, of course. You see, it says,

...and a disposition made under subsection (1) of section 638 or subsection (3) or (4) of section 639...

What are those dispositions? Does that mean a suspended sentence—disposed of by a probation order?

Mr. Scollin: Yes, it includes the making of the probation order. In addition to complaining about being sentenced the person can also include, as part of his complaint to the court, a complaint about the making of the probation order in addition to sentence, for example.

Mr. Hogarth: So your suggestion is that he could appeal any part of a probation order as being an appeal against sentence. If the judge, for instance, curfewed him to certain hours he could appeal that through the Court of Appeal?

Mr. Christie: Yes, he could appeal the entire order.

Mr. Hogarth: Yes, I appreciate that. All right. Thank you.

Clauses 54 and 57 agreed to.

The Chairman: Clause 55 has been stood.

Mr. MacGuigan: What happened to Clause 56, Mr. Chairman?

The Chairman: It contains sections referring to insanity. We thought at this time we would not go into them.

Clauses 58 and 59 agreed to.

[Interprétation]

plement parce qu'il est déjà dans l'article 23 de la Loi sur la preuve au Canada?

M. Christie: Nous n'avions pas pensé que cela pourrait nuire au Code. L'ensemble porte sur l'identification des dossiers criminels et nous avons pensé qu'il serait aussi bien de tout laisser ensemble.

L'article 53 est adopté.

Article 54—Sentence.

M. Hogarth: L'article 638(1) est un nouvel article que nous désirons incorporer, n'est-ce pas?

M. Turner (Ottawa-Carleton): Oui, dans l'article 75 portant sur la libération conditionnelle.

M. Hogarth: Mais, quelles sont les mesures prises en vertu de cet article?

M. Christie: Est-ce qu'il s'agit du paragraphe (1) du nouvel article 638?

M. Hogarth: Oui. On y lit:

...et une mesure prise en vertu du paragraphe (1) de l'article 638 ou des paragraphes (3) ou (4) de l'article 639...

Quelles sont ces mesures? Est-ce qu'il s'agit d'une sentence suspendue, réglée par une ordonnance de libération conditionnelle?

M. Scollin: Oui cela comprend la libération conditionnelle. En plus de faire une plainte au sujet de sa sentence, la personne peut aussi inclure dans sa plainte à la cour, une plainte portant sur l'ordonnance de libération conditionnelle; c'est là un exemple.

M. Hogarth: Par conséquent, la personne peut en appeler d'une partie quelconque de l'ordonnance de libération conditionnelle, cet appel étant considéré comme un appel contre la sentence.

M. Christie: Oui, la personne peut en appeler de toute l'ordonnance.

M. Hogarth: C'est une bonne chose. Merci. Les articles 54 et 57 sont adoptés.

Le président: L'article 55 a été réservé.

M. MacGuigan: Qu'en est-il de l'article 56, monsieur le président?

Le président: Il contient des articles portant sur l'aliénation mentale. Nous avons cru bon de ne pas les étudier tout de suite.

Les articles 58 et 59 sont adoptés.

[Text]

Clause 60 stood.

On Clause 61—Argument may be oral or in writing.

Mr. Hogarth: Mr. Minister, in the earlier parts we provided for counsel being appointed for a person who is thought to be unfit to stand trial, and I have in my notes the fact that we have given that person the right to appeal a disposition but his counsel does not seem to have carried through with him. Would you rely on the general power of the Court of Appeal to appoint counsel in that other section?

Mr. Turner (Ottawa-Carleton): You have answered your own question.

Mr. Hogarth: There is one question I have not answered, Mr. Minister. Who is going to pay them?

• 1720

Mr. Turner (Ottawa-Carleton): We do not have the answer to that one.

Mr. Hogarth: We look forward to a system of national legal aid. It would extend beyond the very narrow limits of this Bill, too.

Clauses 61 and 62 agreed to.

Clauses 63 to 65 inclusive stood.

On Clause 66.

Mr. Hogarth: If it has not already been carried.

The Chairman: You took a drink of water and I carried three clauses.

Mr. Hogarth: Do not worry. They were three clauses I did not want to comment on.

Clauses 66, 67, 68 and 69 agreed to.

On Clause 70, proposed section 624 (1)—Commencement of sentence.

The Chairman: Mr. Chappell.

Mr. Chappell: I received a letter from one of the judges in Quebec who was concerned that while one accused was held in jail for two months because he could not afford bail, another accused was on bail. He wished to give them each two months but he could not date the sentence back.

I gave a copy of the letter with the cases to Mr. Christie and I would appreciate it if Mr. Christie could give us his thoughts on that.

[Interpretation]

L'article 60 est réservé.

Article 61—*Plaidoirie orale ou écrite.*

M. Hogarth: Monsieur le ministre, dans d'autres articles, nous avons prévu que des avocats seraient nommés pour les personnes qui sont incapables de subir un procès. J'ai pris en note que nous avions donné le droit à ces personnes d'en appeler d'une mesure prise contre lui mais on ne semble pas prévoir l'aide d'un avocat. Est-ce que vous comptez sur les pouvoirs généraux de la Cour d'appel pour nommer un avocat à ce moment.

M. Turner (Ottawa-Carleton): Oui, vous avez répondu vous-même à votre question.

M. Hogarth: Il y a une question à laquelle on n'a pas donné de réponse. Qui va payer?

M. Turner (Ottawa-Carleton): Je ne le sais pas.

M. Hogarth: Il faut donc un système national d'assistance juridique. Et il faut que cela comprenne plus que le domaine restreint de ce bill.

Les articles 61 et 62 sont adoptés.

Les articles 63 à 65 inclusivement sont réservés.

L'article 66.

M. Hogarth: Si cela n'a pas déjà été adopté.

Le président: Vous avez pris un verre d'eau et j'ai proposé l'adoption de trois articles.

M. Hogarth: Eh bien, je ne voulais pas commenter ces trois articles.

Les articles 66, 67, 68 et 69 sont adoptés.

L'article 70 relatif à l'article 624(1)—*Début de la sentence.*

Le président: Monsieur Chappell.

M. Chappell: J'ai reçu une lettre d'un juge du Québec qui s'est intéressé au cas d'un accusé détenu en prison durant deux mois parce qu'il n'avait pas les moyens de payer le cautionnement et à celui d'un autre accusé qui, lui, était sous cautionnement. Il voulait sauver deux mais à chacun d'eux mais ne pouvait pas reporter la sentence à une date antérieure.

J'ai remis une copie de la lettre à M. Christie et j'aimerais bien connaître son opinion là-dessus.

[Texte]

Mr. Christie: Yes. The words that are now in section:

...or the court otherwise orders.
should have been deleted in 1959 when the Code was amended to provide that the time which a convicted person spent in custody pending the determination of his appeal should count. In other words, those words were left in by an oversight and really by themselves do not make much sense. We are simply catching up now with an oversight in the 1959 change.

Mr. Chappell: I do not have the cases with me. I believe you have a copy of them, do you not?

Mr. Christie: I have a copy of the letter that you received.

Mr. Chappell: And there were some photo-stats of the cases with them.

Mr. Christie: Yes.

Mr. Chappell: I notice that the court of appeal decision held that they could not date the sentence back to when he was first kept in jail. They increased the sentence and they went on to say, after taking all the facts into consideration, including the fact that he was in jail without bail, "We will give so much time." In that case, because it was a long sentence, they were allowed to take into consideration and deduct the time he had spent in jail before the hearing. Judge Avila Labelle raises the point that if it is a short sentence and the man was in jail for four months without bail and he only means to give three months, how can he overcome that man's ending up with a total of seven months? I cannot see either how you can.

Mr. Christie: He can take into account, presumably, in imposing his sentence any time that has already been spent.

Mr. Chappell: He did and the court of appeal did in a case where they had two years because the man had been in jail without bail for only three months. So there they were able to do it. But Judge Labelle raised the point that this man was in jail for four months without bail. He meant to give this chap and the other one charged at the same time three months each.

Mr. Christie: Yes.

• 1725

Mr. Chappell: One man gets away with three months but the other man has a total of seven months. And the judge is powerless to avoid that inequality.

[Interprétation]

M. Christie: Les mots qui figurent maintenant à l'article «ou que la cour ordonne autrement», auraient dû être supprimés en 1959 lorsque le code a été modifié pour permettre de tenir compte du temps passé en prison avant l'appel. Ce temps devrait lui être compté. En d'autres termes, ces mots ont été laissés dans le texte et ils ne veulent pas dire grand chose. Nous rattrapons maintenant l'oubli de 1959.

M. Chappell: Je n'ai pas le texte des causes avec moi. Je pense que vous en avez une copie?

M. Christie: Oui, j'ai une copie de la lettre.

M. Chappell: Et il y avait des photos près de la cause aussi?

M. Christie: Oui.

M. Chappell: J'ai remarqué que la décision de la Cour d'appel disait que la sentence ne pouvait remonter au premier jour où de détention du détenu. On a augmenté la condamnation, et on a même dit qu'en prenant tous les faits en considération, même en tenant compte du fait que l'accusé était en prison sans cautionnement cela donnait tant de temps. Comme la sentence était longue, ils ont pu déduire le temps que l'accusé avait déjà passé en prison avant le procès. Le juge Avila Labelle a dit que s'il s'agit d'une sentence brève et que l'accusé a passé 4 mois en prison sans cautionnement et qu'il veut lui donner trois mois de fait, comment peut-il éviter le fait que l'accusé en arrière a un total de sept mois d'emprisonnement? Je ne vois pas comment.

M. Christie: Il peut, en imposant la sentence, tenir compte du temps qui a déjà été passé en prison.

M. Chappell: C'est ce que l'on a fait, c'est ce qu'a fait la Cour d'appel lorsque les sentences étaient de deux ans parce que l'accusé avait été détenu sans cautionnement pendant seulement trois mois. C'est ce qu'on a pu faire. Mais le juge Labelle a soulevé le point que l'homme avait déjà été en prison quatre mois sans cautionnement. Il voulait donner des peines de trois mois aux deux hommes.

M. Christie: Oui.

M. Chappell: L'un s'en est tiré avec trois mois et l'autre avec sept. Et le juge n'a rien pu faire pour supprimer cette inégalité.

[Text]

Mr. Christie: If he insists on giving both accused three months and disregarding the fact that one of the accused has already spent four months.

Mr. Chappell: Yes, but if the offence is exactly the same and the evidence is exactly the same you would think he would have to give the same sentence, but even if he did not...

Mr. Christie: Not necessarily, Mr. Chappell. If the condition of the two accused is not identical presumably he can allow for that.

Mr. Chappell: Even then, though, one would end up with four months and the other one three months.

Mr. Christie: There is nothing that can really be done about that. The other chap did four months because he could not raise bail.

Mr. Chappell: Except give the court some discretion as to whether the sentence could date back—as the court otherwise orders.

Mr. Christie: This concept of backdating sentences is something that has been put forward before. The law is, of course, that you cannot backdate them. This has been held on more than one occasion. If you are suggesting that that should be the law, it raises a new policy question.

Mr. Chappell: We all thought the law was...

Mr. Christie: This amendment, as I pointed out earlier, does not relate to that problem. It is a different problem.

Mr. Chappell: Is there any way we can solve the problem that you were first confronted with and solve this problem we have now—that the court is powerless to take into account the time some person spent in jail pending the trial?

Mr. Christie: That is a policy decision that the Minister would undoubtedly be prepared to consider. An argument can be made for that point of view.

Mr. Chappell: I say with respect that common sense seems to compel us to consider it. Is there any way you can think of that it could be done by drafting?

Mr. Christie: Undoubtedly language could be found to allow courts to backdate sentences. I do not think there is any doubt of that, but as I say it is a policy decision that undoubtedly the Minister and his colleagues would want to consider.

[Interpretation]

M. Christie: Mais s'il insiste à donner une peine de prison de trois mois à chacun sans tenir compte du fait que l'un a déjà passé 4 mois en prison.

M. Chappell: Mais si le délit est exactement le même, ainsi que la preuve, on pourrait penser qu'il devrait donner la même sentence, mais même s'il...

M. Christie: Pas nécessairement. Si la situation des deux accusés n'est pas la même, le juge pourra en tenir compte.

M. Chappell: Et malgré cela, l'un finira par passer 4 mois en prison et l'autre, trois.

M. Christie: L'autre a passé quatre mois en prison parce qu'il n'a pu trouver de cautionnement. On ne peut rien y faire.

M. Chappell: On pourrait peut-être donner à la cour le pouvoir discrétionnaire de faire remonter la sentence à une date antérieure.

M. Christie: Mais on a déjà parlé de ce concept de rétroactivité. La loi est opposée à cela. On s'en est tenu à cela à maintes occasions. Si vous dites que c'est ainsi que la loi devrait être, cela soulève une nouvelle question de principe.

M. Chappell: Nous pensions tous que telle était la loi.

M. Christie: Mais l'amendement en question ne vise pas ce problème-là, vise un autre problème.

M. Chappell: Mais il n'y a pas moyen de résoudre le problème qui s'est posé à vous pour la première fois, ainsi que celui qui se pose à nous maintenant. Le tribunal se trouve ici désarmé, il ne peut pas tenir compte du temps passé en prison en attendant le procès.

M. Christie: Mais c'est une question de principe dont le ministre est probablement disposé à tenir compte. On peut défendre ce point de vue.

M. Chappell: Le bon sens semble nous obliger à en tenir compte. Il faudrait quand même trouver un moyen de le faire en rédigeant le texte.

M. Christie: Il est certain que l'on pourra trouver des dispositions pour permettre au tribunal de prononcer une rétroactivité de la peine, mais c'est une question de principe, et il n'y a pas de doute que le ministre ou ses collègues voudront s'y arrêter.

[Texte]

Mr. Chappell: I am sure a competent Minister will agree with me that because one man could not afford bail and spent six months in jail without bail he should not be discriminated against by serving an extra six months.

The Chairman: Mr. MacGuigan.

Mr. MacGuigan: Mr. Chairman, surely this involves a lot of broader questions about bail, for one thing, on which the Minister is going to be producing legislation and I would suggest it involves such basic questions as whether there should be the penalty of a fine as an alternative to imprisonment at all or whether the court should simply have a choice between fine or imprisonment, but not both. All of these things will have to be discussed very fully at some future session of the Justice Committee after the Minister has presented his proposals and I think they should wait until that time.

The Chairman: Mr. McCleave.

Mr. McCleave: Mr. Chairman, I think we have a real problem here. As I understand it, in many provinces a two-year penitentiary sentence will be imposed so that people are not sent into hell holes and allowed to rot in some of the municipal jails. It seems to me that there should be a power in the court to start the sentence, even if the man has spent four months or so in a municipal jail until the time of sentence.

I really think it should be stood, if nothing else, so that the Minister has a chance to re-examine his policy on it.

Mr. Turner (Ottawa-Carleton): This particular section relates, of course, to the time running during an appeal after the sentence has been imposed. It does not refer to back-dating sentences which is a matter, as Mr. MacGuigan has pointed out, affecting detention before trial, bail, the whole problem of sentencing, and I will consider the broader question. I would like to consider it when we are studying those matters. I would also like to get advice on a question of such general application. I would like to get the opinion of the Uniformity Commissioners on it. It involves reviewing a lot of other sections of the Code.

Mr. Chappell: Let me assure you, Mr. Turner, that many of the judiciary are somewhat concerned with the threat of taking away power they did have for a while and which some think they still have of taking into allowance the time a man has served.

[Interprétation]

M. Chappell: Mais le ministre conviendra avec moi que ce n'est pas parce qu'un homme n'a pas pu trouver de cautionnement et a dû passer six mois en prison, sans cautionnement, qu'il doit faire l'objet d'une injustice en passant un autre six mois en prison.

Le président: Monsieur MacGuigan.

M. MacGuigan: Mais cela met en cause des questions beaucoup plus vastes en ce qui concerne le cautionnement. Le ministre présentera des lois là-dessus et cela mettra en cause de grands principes, à savoir, est-ce que nous pourrions remplacer la peine par une amende par exemple? Est-ce que la cour ne serait pas, ne pourrait pas être libre de choisir entre l'amende et la peine de prison, mais non les deux. On devra revenir là-dessus plus tard, ici au Comité, lorsque le ministre aura eu l'occasion d'y songer. Il serait peut-être bon d'attendre à ce moment-là.

Le président: Monsieur McCleave.

M. McCleave: Nous sommes saisis ici d'un grand problème. Si j'ai bien compris, dans un grand nombre de provinces, on accorde des peines de deux ans de prison, de façon à éviter aux gens à passer deux ans dans les endroits épouvantables que sont souvent les prisons municipales. Si l'accusé a passé quatre mois dans une prison municipale en attendant sa sentence, la cour devrait pouvoir décider quand commencera la sentence.

Je pense qu'on devrait au moins reporter l'article jusqu'à ce que le ministre ait eu la chance de réétudier sa politique à ce sujet.

M. Turner (Ottawa-Carleton): Cet article porte sur le temps qui s'écoule en attendant un appel après que la sentence a été prononcée. Il ne s'agit pas ici de la rétroactivité des peines. C'est une question qui met en cause toute une série de circonstances, détention avant procès, cautionnement, tout le problème des sentences. J'aimerais y revenir lorsque nous étudierons ces questions. J'aimerais aussi obtenir des conseils sur une question aussi générale, ainsi que l'avis de la Commission de l'uniformité de la législation, car cela met en cause en grand nombre d'autres articles du Code.

M. Chappell: Un grand nombre de magistrats n'aiment pas qu'on leur enlève les pouvoirs qu'ils ont eus pendant un certain temps et qu'ils pensent avoir encore: par exemple, le pouvoir de tenir compte du temps déjà fait.

[Text]

Mr. Turner (Ottawa-Carleton): This does not do it. This does not affect your problem.

The Chairman: Mr. Hogarth.

Mr. Hogarth: Mr. Minister have any representations been made that we go back to the old system where the court of appeal has discretion as to whether or not the sentence shall commence at the conclusion of the appeal or it shall run from the time it was imposed?

Mr. Turner (Ottawa-Carleton): There were some submissions. Some of the judges in the courts of appeal were worried about frivolous appeals and that sort of thing. We considered it and rejected it.

Mr. Hogarth: That is fine, thank you.

• 1730

Mr. Chappell: Mr. Turner, what I am hoping is that the words

... or the court otherwise orders. are replaced by words that can do it, that can accomplish that result.

Mr. Turner (Ottawa-Carleton): I just cannot give you an off-the-top-of-the-head answer.

Mr. Chappell: No; I am just trying to understand what it is.

Mr. Turner (Ottawa-Carleton): We get the point. I really cannot deal with a point of this magnitude without considering the whole question of sentencing, bail and detention before trial, Mr. Gleave. We have taken the point seriously. When we are reviewing the bail provisions we will also review the sentence provisions.

Mr. Chappell: When will that be, Mr. Turner?

Mr. Turner (Ottawa-Carleton): The next bill we bring in, as soon as we receive the final report of Judge Ouimet's Committee, which should be at the end of March, as I understand it.

Clause 70 agreed to, on division.

On Clause 71—

Mr. Murphy: I have a question on Clause 71. The subsection which is being repealed appears to be a subsection which used to apply only to the Province of Ontario, and which provided for the distribution of the proceeds of fines among municipalities in that province. Is there some other provision to cover that?

[Interpretation]

M. Turner (Ottawa-Carleton): Oui, mais cet article ici ne touche pas aux problèmes que vous évoquez.

le président: Monsieur Hogarth.

M. Hogarth: Est-ce que l'on n'a jamais pensé à revenir à l'ancien système selon lequel la Cour d'appel pouvait décider si la sentence devait commencer avec la fin de l'appel ou depuis son imposition?

M. Turner (Ottawa-Carleton): On y a pensé. Quelques juges des cours d'appel s'inquiétaient au sujet d'appels non importants. Nous avons envisagé cette question et nous l'avons rejetée.

M. Hogarth: Merci.

M. Chappell: Est-ce que l'on ne pourrait pas remplacer ces mots «à moins que le tribunal n'en décide autrement» par des mots qui pourraient nous permettre d'arriver à l'effet désiré.

M. Turner (Ottawa-Carleton): Je ne peux pas vous répondre très vite.

M. Chappell: Non. J'essaie seulement de comprendre ce que c'est.

M. Turner (Ottawa-Carleton): Nous arrivons au sujet. Je ne peux pas traiter un point aussi important sans revenir sur toute la question de la peine, du cautionnement, de l'emprisonnement préventif. Nous avons considéré la question sérieusement. Quand nous en serons au cautionnement nous verrons la question de la peine.

M. Chappell: Quand y serons-nous?

M. Turner (Ottawa-Carleton): Nous considérerons ces questions dans notre prochain projet de Loi, dès que nous aurons reçu le rapport final du Comité du Juge Ouimet qui sera présenté, je pense, à la fin du mois de mars.

L'article 70 est adopté à la majorité.

Article 71.

M. Murphy: J'ai une question concernant cet article. L'alinéa que l'on supprime semble être l'alinéa qu'employait, et elle seule, la province d'Ontario, pour la répartition des amendes entre les diverses municipalités. Est-ce qu'il y a d'autres dispositions pour couvrir cela?

[*Texte*]

Mr. Christie: That is quite right. It is a provision that many years ago crept into the Criminal Code on the basis of representations made by municipalities in Ontario. Now that the Province of Ontario is taking over practically the entire cost of the administration of justice the attorney-general of that province asked the Minister of Justice if the government would consider recommending to Parliament that Section 626(4) be repealed.

Mr. Murphy: Mr. Wishart wants to keep all the money in Toronto and does not want to refer to Sault Ste. Marie; is that it?

Mr. Turner (Ottawa-Carleton): Mr. Wishart comes from Sault Ste. Marie and I think he will take care of that place! Not as well as a federal member, but he will do his best!

Clauses 71 to 73 inclusive agreed to.
On Clause 74—

Mr. Hogarth: Mr. Chairman, this is one of the clauses with which the Solicitor General is concerned. I was speaking with him the other day and I understand that he will possibly be putting forward certain amendments to the provisions in this bill.

Mr. Turner (Ottawa-Carleton): Which clause are we talking about now?

Mr. Hogarth: Clause 74.

The Chairman: We will stand that.

Mr. Hogarth: I ask that it stand until he has an opportunity to consider it.

Clause 74 stood.
On Clause 75—

Mr. Hogarth: Mr. Chairman, this deals with this new concept on probation.

The Chairman: Is it the wish of the Committee that we adjourn until Thursday at 9.30 a.m.?

Some hon. Members: Agreed.

The Chairman: Before we do that, may I have a motion for the re-election of Mr. Ouellet as vice-chairman?

Some hon. Members: Agreed.

Mr. Hogarth: Mr. Chairman, can we have some indication of what our agenda will be? It is extremely difficult to jump from one of these sections to the other. One sometimes misses things.

The Chairman: On Thursday morning we are going to hear a doctor who will give

[*Interprétation*]

Mr. Christie: Vous avez parfaitement raison. C'est une disposition qui s'est glissée dans le Code criminel par suite d'observations qui nous avaient été faites par les municipalités de la province d'Ontario. Or maintenant que la province d'Ontario paie à peu près entièrement l'administration de la justice, le Procureur général de cette province a prié notre ministre de la Justice de recommander au Parlement le rappel de l'article 626(4).

Mr. Murphy: M. Wishart veut garder tout l'argent à Toronto, il ne veut pas en donner à Sault-Sainte-Marie, est-ce cela?

M. Turner (Ottawa-Carleton): M. Wishart vient de Sault-Ste-Marie et je pense qu'il pourra s'occuper de la région! Pas aussi bien qu'un député fédéral, mais il fera de son mieux!

Les articles 71 à 73 inclus sont adoptés.
Article 74.

M. Hogarth: Un instant. C'est un des articles qui préoccupent le Solliciteur général. Je lui ai parlé l'autre jour et je crois comprendre qu'il aura vraisemblablement quelques amendements à proposer à ce Bill.

M. Turner (Ottawa-Carleton): De quel article parlez-vous?

M. Hogarth: Article 74.

Le président: Réservez-le.

M. Hogarth: Je demande seulement un délai pour qu'il puisse l'examiner.
Article 74 est réservé.
Article 75.

M. Hogarth: Monsieur le président, il s'agit de nouveaux principes sur la libération conditionnelle.

Le président: Le Comité désire-t-il s'ajourner jusqu'à jeudi à 9 heures 30?

Des voix: D'accord.

Le président: Auparavant, pourrions-nous avoir une motion pour la réélection de M. Ouellet comme vice-président?

Des voix: D'accord.

M. Hogarth: Monsieur le président, pourrions-nous donner quelque indication sur notre ordre du jour? Il est très difficile de sauter d'un article à l'autre. Parfois nous sautons quelque chose.

Le président: Jeudi matin, nous aurons un médecin qui donnera son témoignage sur l'a-

[Text]

evidence about abortion and homosexuality. Then we will continue with these sections.

Mr. Hogarth: Mr. Chairman, after we hear the doctor, will we finish proposed Sections 149A and 537?

The Chairman: The Minister will not be present. I think we had better wait until the following Tuesday.

Mr. Turner (Ottawa-Carleton): Would it be convenient, if, after hearing Mr. Valade's witness, the Committee could return to the process it has now embarked on?

Mr. Hogarth: To proposed Section 638?

Mr. Turner (Ottawa-Carleton): Yes; and hold over gross indecency and abortion until Tuesday. I discussed this matter with Mr. Woolliams. He did not want those matters discussed today. I would be grateful if they could be discussed on Thursday, and we could take him up on it.

Mr. Hogarth: On Thursday we will hear the witness and then go on to proposed Section 638 and the subsequent sections clause-by-clause, as we have been doing. Then, on the Tuesday following, we will go back to proposed Sections 149A and 537.

Mr. Turner (Ottawa-Carleton): Yes.

The Chairman: This will be the plan, if it is agreeable to the Committee.

Mr. Turner (Ottawa-Carleton): May I just make one comment? Perhaps we could go ahead with what we are doing. It may be that I will prefer, through my officials to have Clause 75 and those dealing with suspended sentences and probation stood until I am here personally; but you could continue moving through the Code.

Mr. Hogarth: Yes; but that takes us into the Solicitor General's material, and we do not have much after proposed Section 639.

The Chairman: This problem bothers me.

Mr. Christie: Are you talking of the meeting on Thursday afternoon, Mr. Hogarth?

Mr. Hogarth: No, I am just talking about the sequence—where we are going.

Mr. Christie: Perhaps on Thursday afternoon if you cleaned up the rest of the non-contentious matters, plus hearing the witness, that would take care of that session?

Mr. Hogarth: The Minister has suggested that he wants to be here when proposed Sec-

[Interpretation]

vortement et l'homosexualité. Ensuite nous continuerons la discussion de ces articles.

M. Hogarth: Monsieur le président, après avoir entendu ce médecin est-ce que nous terminerons l'étude des articles 149A et 537?

Le président: Le ministre ne sera pas ici. Alors nous devrions attendre jusqu'à mardi prochain.

M. Turner (Ottawa-Carleton): Après avoir entendu le témoin de M. Valade, le Comité pourrait peut-être revenir où nous en sommes présentement.

M. Hogarth: A l'article 638?

M. Turner (Ottawa-Carleton): Oui; et attendre mardi pour l'avortement et la grossière indécence. J'en ai parlé avec M. Woolliams. Il ne voulait pas que l'on en parle aujourd'hui. J'aimerais que cela soit discuté jeudi.

M. Hogarth: Alors jeudi matin nous entendrons le témoin, ensuite nous reviendrons à l'article 638 puis aux articles suivants un par un, comme nous l'avons fait. Jeudi prochain nous reviendrons aux articles 149A et 537.

M. Turner (Ottawa-Carleton): Oui.

Le président: Ce sera le programme, si cela convient au Comité.

M. Turner (Ottawa-Carleton): Puis-je faire une remarque s'il vous plaît. Peut-être que nous pourrions continuer ce que nous sommes en train de faire avec mes fonctionnaires. Mais j'aimerais que l'on réserve l'article 75 et les autres qui traitent de la libération conditionnelle jusqu'à mon retour.

M. Hogarth: Oui, mais alors nous en arrivons aux articles qui concernent le Solliciteur général, et après l'article 639 il n'y a plus grand chose.

Le président: Ce problème m'inquiète.

M. Christie: Parlez-vous de la réunion de jeudi, M. Hogarth?

M. Hogarth: Non, je parle de l'ordre des articles seulement.

M. Christie: Peut-être que jeudi après-midi, si vous avez terminé l'étude des questions non litigieuses en plus d'avoir entendu le témoin, cela suffirait pour cette séance?

M. Hogarth: Le ministre dit qu'il veut être ici pour l'adoption de 638. Nous ne pouvons

[Texte]

tion 638 goes through. Therefore, we cannot do that on Thursday afternoon. About the only thing that is left is the Solicitor General's material.

Mr. Turner (Ottawa-Carleton): On Thursday afternoon he will be with me.

Mr. Hogarth: And you are going to be out of the city?

Mr. Turner (Ottawa-Carleton): Yes.

The Chairman: Surely we can find something to do if we find we are getting through.

Mr. Turner (Ottawa-Carleton): Why not finish up all the routine matters? That will leave us only gross indecency, abortion, insanity and sentencing and probation.

Mr. Hogarth: I do not think much of the Solicitor General's material is too controversial. Perhaps we could go through it, stand each clause and then vote when he has a chance to return.

Mr. Turner (Ottawa-Carleton): Let me discuss this with the Solicitor General. He may agree to having his officials do it.

Mr. Hogarth: Thank you.
Meeting adjourned.

[Interprétation]

donc pas le faire jeudi après-midi. Alors il ne reste que les questions qui se rapportent au Solliciteur général.

M. Turner (Ottawa-Carleton): Jeudi après-midi, il sera avec moi.

M. Hogarth: Vous ne serez pas ici?

M. Turner (Ottawa-Carleton): Non?

Le président: Si nous voyons que nous terminons nous trouverons quelque chose à faire.

M. Turner (Ottawa-Carleton): Terminez toutes les questions de routine et il n'y aura que les attentats à la pudeur, l'avortement, la déficience mentale et la libération conditionnelle.

M. Hogarth: Il n'y a pas grand'chose dans les articles qui se rapportent au Solliciteur général qui risque de soulever des controverses. Nous pourrions peut-être les étudier, les réserver et ensuite les adopter lorsqu'il sera là.

M. Turner (Ottawa-Carleton): Permettez-moi d'en parler au Solliciteur général, il acceptera peut-être que ces fonctionnaires traitent de la question.

M. Hogarth: Merci.
La séance est levée.

OFFICIAL BILINGUAL ISSUE

FASCICULE BILINGUE OFFICIEL

HOUSE OF COMMONS

CHAMBRE DES COMMUNES

First Session

Première session de la

Twenty-eighth Parliament, 1968-69

vingt-huitième législature, 1968-1969

STANDING COMMITTEE

COMITÉ PERMANENT

ON

DE LA

JUSTICE AND LEGAL AFFAIRS

JUSTICE ET DES QUESTIONS
JURIDIQUES

Chairman

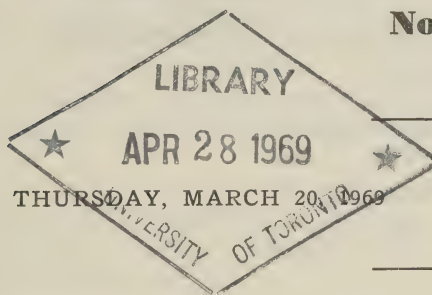
Mr. Donald R. Tolmie

Président

MINUTES OF PROCEEDINGS
AND EVIDENCE

PROCÈS-VERBAUX ET
TÉMOIGNAGES

No. 12



THURSDAY, MARCH 20, 1969

LE JEUDI 20 MARS 1969

Respecting

Concernant le

BILL C-150,

BILL C-150,

Criminal Law Amendment Act, 1968.

Loi de 1968 modifiant le droit pénal.

WITNESSES—TÉMOINS

(See Minutes of Proceedings)

(Voir Procès-verbaux)

STANDING COMMITTEE ON
JUSTICE AND LEGAL
AFFAIRS

Chairman
Vice-Chairman

Mr. Donald Tolmie
M. André Ouellet

and Messrs.

Blair,
Cantin,
Chappell,
Deakon,
Gervais,
Gilbert,

Guay (*Lévis*),
Hogarth,
MacEwan,
MacGuigan,
McCleave,
McQuaid,

Murphy,
Peters,
Rondeau,
Schumacher,
Valade,
Woolliams—(20).

(Quorum 11)

Le secrétaire du Comité,
Robert V. Virr
Clerk of the Committee.

COMITÉ PERMANENT
DE LA
JUSTICE ET DES QUESTIONS
JURIDIQUES

Président
Vice-président

MINUTES OF PROCEEDINGS

[Text]

THURSDAY, March 20, 1969.

(16)

The Standing Committee on Justice and Legal Affairs met this day at 9.43 a.m., the Chairman, Mr. Tolmie presiding.

Members present: Messrs. Blair, Cantin, Chappell, Deakon, Gervais, Gilbert, Hogarth, MacEwan, MacGuigan, McQuaid, Peters, Rondeau, Schumacher, Tolmie, Valade—(15).

Also present: Messrs. Isabelle, Matte, and Ritchie, Members of Parliament.

Witnesses: Dr. Robert Lavigne, President, Association of Medical Boards of the Hospitals of the Province of Quebec; Dr. N. Walsh, Psychiatrist, Saint Mary's Hospital, Montreal; Dr. George B. Maughan, Obstetrician and Gynecologist in Chief, Royal Victoria Hospital, Montreal; Dr. Gilles Hurteau, Obstetrician and Gynecologist, University of Ottawa; Dr. Jacques Lorrain, Obstetrician and Gynecologist, Sacré-Cœur Hospital, Montreal.

The Chairman introduced Dr. Lavigne and invited him to introduce his colleagues.

The Chairman then requested the witnesses to restrict themselves to the technical and administrative aspects of Bill C-150 relating to abortion.

Dr. Hurteau showed slides relating to the viability of life, following which Dr. Lavigne read a short brief.

Mr. Chappell raised a point of order on the content of the brief as presented. Several members spoke to the point of order.

Dr. Lavigne assisted by Drs. Walsh, Maughan and Lorrain responded to questions.

There being no further questions Mr. Hogarth moved that the witnesses be reimbursed for out-of-pocket expenses.

PROCÈS-VERBAUX

[Traduction]

Le JEUDI 20 mars 1969.

(16)

Le Comité permanent de la Justice et des questions juridiques se réunit à 9:43 ce matin, sous la présidence de monsieur Tolmie.

Présents: MM. Blair, Cantin, Chappell, Deakon, Gervais, Gilbert, Hogarth, MacEwan, MacGuigan, McQuaid, Peters, Rondeau, Schumacher, Tolmie et Valade (15).

De même que: MM. Isabelle, Matte, et Ritchie, députés.

Témoins: Le docteur Robert Lavigne, président de l'Association des conseils médicaux des hôpitaux du Québec; le docteur N. Walsh, psychiatre, hôpital Saint Mary, Montréal; le docteur George B. Maughan, obstétricien et gynécologue en chef, hôpital Royal Victoria, Montréal; le docteur Gilles Hurteau, obstétricien et gynécologue, université d'Ottawa; le docteur Jacques Lorrain, obstétricien et gynécologue, hôpital du Sacré-Cœur, Montréal.

Le président présente le docteur Lavigne et l'invite à présenter ses collègues.

Le président demande alors aux témoins de s'en tenir aux aspects techniques et administratifs du Bill C-150 relatifs à l'avortement.

Le docteur Hurteau projette des diapositives relatives à la viabilité, après quoi, le docteur Lavigne fait lecture d'un court mémoire.

M. Chappell en appelle au Règlement quant au contenu du mémoire présenté. Plusieurs députés expriment des opinions sur cet appel au Règlement.

Le docteur Lavigne aidé des docteurs Walsh, Maughan, et Lorrain répond aux questions.

Comme il n'y a plus de questions, M. Hogarth propose que l'on rembourse les témoins pour les dépenses qu'ils ont défrayées eux-mêmes.

Motion agreed to.

At 12.30 p.m. the Committee adjourned until 3.30 p.m. this date.

AFTERNOON SITTING
(17)

The Standing Committee on Justice and Legal Affairs met this day at 3.50 p.m., the Chairman, Mr. Tolmie presiding.

Members present: Messrs. Cantin, Chappell, Deakon, Gervais, Gilbert, Guay (*Lévis*), Hogarth, MacGuigan, McQuaid, Peters, Rondeau, Tolmie, Valade—(13).

Witness: From the Department of Justice: Mr. J. A. Scollin, Q.C., Director, Criminal Law Section.

The Committee resumed clause by clause consideration of Bill C-150.

Clauses 76 to 85 were carried.

On Clause 86 Mr. Deakon moved;

That Bill C-150 be amended by striking out lines 29, 30 and 31 on page 91 and substituting as follows:

‘or the sentence appealed against;’

Motion carried and Clause 86 as amended carried.

Clauses 87 to 93 were carried.

Clauses 116 to 119 were carried.

At 5.07 p.m., the Committee adjourned until March 25, 1969.

On adopte cette proposition.

A 12:30, le Comité lève la séance jusqu’à 15:30, cet après-midi.

SÉANCE DE L’APRÈS-MIDI
(17)

Le Comité permanent de la Justice et des questions juridiques se réunit à 15:50 cet après-midi, sous la présidence de M. Tolmie.

Présents: MM. Cantin, Chappell, Deakon, Gervais, Gilbert, Guay (*Lévis*), Hogarth, MacGuigan, McQuaid, Peters, Rondeau, Tolmie, Valade (13).

Témoin: Du ministère de la Justice: M. J. A. Scollin, C. R. Directeur de la section du droit criminel.

Le Comité reprend l’étude article par article du Bill C-150.

On adopte les articles 76 à 85.

Amendement à l’article 86 du Bill, proposé par M. Deakon:

Que le bill C-150 soit modifié par le retranchement des lignes 30 et 31, à la page 91, et leur remplacement par ce qui suit:

«—tence dont est appel;»

On adopte la proposition et l’article 86 modifié.

On adopte les articles 87 à 93.

On adopte les articles 116 à 119.

A 17:07, le Comité s’ajourne jusqu’au 25 mars 1969.

Le secrétaire du Comité,

Robert V. Virr

Clerk of the Committee.

[Texte]

EVIDENCE

[Recorded by Electronic Apparatus]

Thursday, March 20, 1969

• 0943

The Chairman: Gentlemen, we have our quorum. Mr. Hogarth?

Mr. Hogarth: Mr. Chairman, I notice that we have a projector set up and I was wondering if it would not be more administratively convenient if we were to see any motion pictures or any slides that are to be shown before the formal Proceedings begin today. It seems to me that it is going to be awfully difficult to keep the record straight if we are seeing pictures and asking questions at the same time. The proceedings will be almost meaningless.

Might I suggest, sir, subject to what you and the rest of the Committee might have to say that we see these slides first, if that is what Mr. Valade proposes, and then discuss the matter in the formal proceedings later.

Mr. Valade: Yes, Mr. Chairman, that was my understanding. I agree with Mr. Hogarth that we should see all the slides and hear the explanations first and also hear the explanations of the graphs that were submitted to us. Then we can go on to questioning if the Committee agree.

The Chairman: What is the wish of the Committee?

Mr. Valade: I do not think the Committee should be tied up. These doctors have come at our invitation and they want to substantiate their points. I think it would be in the interest of members of the Committee to get questions in the right direction.

The Chairman: Gentlemen, if you agree we will see the slides before the actual formal Proceedings commence.

• 0945

We have with us today Dr. Robert Lavigne, President, Association of Medical Boards of the Hospitals of the Province of Quebec. Dr. Lavigne, will you introduce your associates, please?

Dr. Robert Lavigne (President, Association of Medical Boards of the Hospitals of the Province of Quebec): Yes, I am very happy...

[Interprétation]

TÉMOIGNAGES

(Enregistrement électronique)

Le jeudi 20 mars 1969

Le président: Messieurs, nous sommes en nombre. M. Hogarth?

M. Hogarth: Monsieur le président, je vois que le projecteur est déjà installé; alors, il vaudrait peut-être mieux montrer les films ou les diapositives avant d'entamer les délibérations, plutôt que d'alterner entre la projection et les questions, ce qui rendrait le compte rendu plus ou moins intelligible pour le lecteur.

Sous réserve de l'assentiment du président et du Comité, je propose donc que l'on montre les diapositives d'abord, si c'est bien ce que M. Valade avait en tête, puis que nous reprenions nos délibérations.

M. Valade: Oui, monsieur le président, c'est ce qui a été convenu. Je crois, comme M. Hogarth, que nous devrions voir les diapositives d'abord et entendre les explications qui se rapportent à celles-ci et aux diagrammes. Ensuite, nous pourrions passer aux questions, si le Comité est d'accord.

Le président: Puis-je avoir votre opinion à ce sujet?

M. Valade: On devrait adopter une attitude souple, je pense. Les médecins que nous avons fait venir ici veulent faire ressortir certains points. Il serait donc dans notre intérêt à tous de poser des questions pertinentes.

Le président: Messieurs, si vous êtes d'accord, nous montrerons les diapositives avant de passer aux délibérations proprement dites. Nous avons à nos côtés aujourd'hui le docteur Robert Lavigne, président de l'Association des conseils médicaux des hôpitaux du Québec. M. Lavigne, pourriez-vous nous présenter vos adjoints?

Dr Lavigne (président de l'Association des conseils médicaux des hôpitaux du Québec): Oui, certes...

[Text]

The Chairman: You may speak French, Dr. Lavigne.

Dr Lavigne: Merci, monsieur le président. Merci, messieurs du comité de la justice et des questions juridiques.

I would like to present to you the doctors who came with me today. On my left there is Dr. Jacques Lorrain, who is a gynecologist at the Sacré Cœur Hospital in Montreal and who does research into publications all over the world regarding the subject of abortion. There is Dr. G. Maughan who is the Chief of Gyneco-Obstetrics Department at McGill University. He is also Chief at the Royal Victoria Hospital.

Le D^r Parent, secrétaire de l'Association des Bureaux Médicaux des Hôpitaux de la Province de Québec. Le D^r Noël Walsh, psychiatre à l'hôpital St. Mary's. Il était l'assistant du D^r Karl Stern, qui est actuellement à l'hôpital, et qui nous a fait le plaisir de nous donner ses impressions sur le mémoire dont nous allons vous faire part ce matin. Le D^r Hurteau, chef du département de gynéco-obstétrique à l'Université d'Ottawa. Le D^r Boisvert, psychiatre à l'hôpital du Sacré-Cœur de Montréal. Le D^r René Simard, chef du département de gynéco-obstétrique de l'Université Laval, qui doit arriver bientôt. Il est venu en avion et il sera peut-être de quelques minutes en retard. Je dois aussi mentionner le D^r Michel Bérard, le chef du département de gynéco-obstétrique de l'Université de Montréal, qui voulait venir ce matin et que la maladie retient à la maison, ainsi que le D^r Karl Stern qui est actuellement hospitalisé et qui ne peut pas venir.

Il me fait plaisir de voir ces médecins autour de moi car ils sont reconnus par leurs confrères pour leur intégrité, pour leur qualité et leur compétence scientifique très poussée, ce qui les a fait nommer à des charges très importantes dans leurs universités.

The Chairman: Thank you very much, doctor. I think it is only fair again to remind the Committee and the witnesses that the policy of the Committee is to have the number of witnesses restricted to six. These witnesses are to restrict themselves to giving evidence pertaining to the technical or administrative aspects of the clauses in Bill C-150. We have decided, as a Committee, not to allow witnesses to expound their views concerning the pros and cons of the substantive matters in the Bill.

Today, I understand, there will be discussion pertaining to the study of abortion. I ask the witnesses and caution them as far as

[Interprétation]

Le président: Vous pouvez parler en français, D^r Lavigne.

Dr. Lavigne: Thank you, Mr. Chairman. Thank you, members of the Committee on Justice and Legal Affairs.

Je voudrais vous présenter les médecins qui m'accompagnent aujourd'hui. À ma gauche, le D^r Jacques Lorrain, gynécologue, de l'hôpital du Sacré-Cœur à Montréal, qui étudie la documentation mondiale sur l'avortement, et le D^r G. Maughan, chef du département de gynécologie et d'obstétrique à l'université McGill et gynécologue en chef à l'hôpital Royal Victoria.

Dr. Parent, Secretary of the Association of Medical Boards of the Hospitals of the Province of Quebec. Dr. Noel Walsh, Psychiatrist, St. Mary's Hospital. He was the assistant to Dr. Karl Stern who at the present time is in hospital and who was kind enough to give us his impressions on a brief which we shall submit to you this morning. Dr. Hurteau, Chief, Gyneco-Obstetrics, University of Ottawa. Dr. Boisvert, Psychiatrist, Chief, Sacré-Cœur Hospital, in Montreal, and also Dr. René Simard, Chief, Department of Gynecology and Obstetrics, at Laval University, who is supposed to arrive soon. He was flying in and he might be a few minutes late. I should also mention Dr. Michel Bérard, Chief of the Gynecology and Obstetrics Department of the University of Montreal, who was supposed to come this morning, but who is not well, and also, as I said, Dr. Karl Stern, who is at present in hospital and cannot be here on that account.

I am pleased to introduce these doctors who enjoy a high standing among their confreres because of their integrity, their excellence and their very advanced scientific ability, which has led them to occupy high positions within their universities.

Le président: Merci beaucoup, docteur. Il ne serait que juste, je crois, de rappeler aux membres et aux témoins que le comité a pour principe de n'entendre que six témoins. Ces derniers doivent s'en tenir dans leur déposition aux aspects techniques ou administratifs des dispositions du bill C-150. Le comité a décidé de ne pas permettre aux témoins d'exprimer leur point de vue personnel sur les aspects essentiels de ce projet de loi.

Ce matin, nous parlerons de l'avortement thérapeutique. Je voudrais donc prier les témoins et les avertir qu'ils s'en tiennent,

[Texte]

possible to restrict themselves to their views concerning the administrative or technical repercussions flowing from this proposed Bill.

I think, doctor, you have been informed of this and I hope you will do your utmost to see that you adhere to this injunction.

Mr. Valade: Mr. Chairman, on that point may I say that this morning we will deal with technical aspects, but technical aspects from a medical, not a legal, point of view and for that purpose it may seem at some point that there may be deviation from the purely legal and technical aspects of the proposed legislation. I ask the Chairman and the Committee to understand that these are very renowned specialists and each is a specialist in his field.

Therefore, for some reason they may have to reply to a question on medical technical grounds instead of Dr. Lavigne. I think the

● 0950

Committee will understand this procedure so that we will not be restricted in some of the answers. I feel that if there are some questions outside the very restricted scope that this Committee is bound by we will take that into consideration when we draft the report. Certainly we should not limit the right to reply by one of these specialists who have done us the honour of coming here today.

The Chairman: Are there any comments from Committee members?

Mr. Hogarth: Mr. Chairman, I think the steering committee ironed this out beforehand.

Mr. Valade: What is a technical discussion in medical science? This has to have wide scope; otherwise we will not be able to get the answers we want and this is my objection.

M. Cantin: Monsieur le président, nous avons déjà sous les yeux tous les témoignages qui ont été présentés l'an dernier au Comité de la santé, du bien-être social et des affaires sociales, sur la portée des amendements proposés à la loi sur l'avortement et les autres. Cette année, le Comité a décidé de restreindre l'audition de témoins pour cette raison. Alors, il ne faudrait pas commencer une autre série de conférences sur la politique même des amendements au code criminel, parce que nous avons constaté que la preuve est déjà suffisante. Je suis d'accord pour que nous écoutions le témoin, s'il veut nous donner des explications sur la portée légale des amendements proposés. Je crois que c'est là l'entente

[Interprétation]

dans toute la mesure du possible, à exprimer leurs vues sur les incidences administratives ou techniques du projet de loi. Je pense, docteur Lavigne, qu'on vous l'a dit et j'ose espérer que vous ferez de votre mieux pour vous y conformer.

M. Valade: Monsieur le président, permettez-moi de dire que nous aborderons les aspects techniques de la question, ce matin, mais au point de vue médical, plutôt que juridique. Il se peut donc qu'à certains moments, nous nous écartions apparemment des aspects purement techniques et juridiques de la mesure. Je prie le président et le comité de se rendre compte que nous avons avec nous des spécialistes très connus, qui font tous autorité dans leur domaine respectif.

Il est possible qu'ils aient à répondre, à la place du Dr Lavigne, à certaines questions techniques de caractère médical. Le comité, je

pense, le comprendra pour éviter de restreindre, à un moment donné, les réponses des témoins. Il est possible qu'on leur pose des questions qui dépassent le cadre très restreint de nos attributions, mais j'ai l'impression que nous en tiendrons compte dans notre rapport. Nous ne devrions pas, certes, limiter le droit de réponse à quiconque des spécialistes qui nous ont fait l'honneur de venir ici aujourd'hui.

Le président: Auriez-vous des observations à faire à ce sujet?

M. Hogarth: Monsieur le président, le comité de direction y a vu déjà.

M. Valade: Qu'entend-on par discussion technique en science médicale? Il faut tout de même que la discussion soit assez libre, sans quoi nous n'aurons pas réponse à nos questions. Voilà mon objection.

Mr. Cantin: Mr. Chairman, we already have before the Committee all the evidence given last year before the Health, Welfare and Social Affairs Committee, on the scope of the amendments suggested in respect of the bill dealing with abortion and other bills. The Committee decided to restrict, this year, the hearing of witnesses for that reason. So we should not initiate another series of policy discussions on these amendments to the Criminal Code, because we have felt that the evidence we have received is already adequate. I agree that we should hear the witness if he wants to provide explanations on what he feels is the legal scope of the proposed amendments. I believe that this is

[Text]

qui a été conclue, et que nous devrions nous en tenir en cela.

Mr. Rondeau: Monsieur le président, nous nous sommes entendus sur le fait que nous entendrions six témoins. Alors le fait que nous soyons restreints à l'audition de six témoins est déjà une restriction assez importante. Le Comité ne pourra entendre que six témoins et également relire les témoignages qui ont été faits à d'autres comités. Je ne crois pas que nous devons limiter ces témoignages à l'aspect technique de la question. A mon avis, nous devrions leur permettre d'exprimer leur opinion sur le fond de la question.

M. Cantin: Je pense bien, monsieur le président, qu'il s'agit surtout de commencer par écouter le témoin, ce qu'il a à dire, et au fur et à mesure, voir ce qui se passera.

Mr. Valade: It was decided that we should see the slides, have an explanation at the graphics and then hear the main witness. I think there is some possibility of questioning and the Committee has raised no objections to this. Mr. Chairman, I think we should begin.

The Chairman: We will start.

Mr. Hogarth: Mr. Chairman, I suggest that Dr. Lavigne be treated in exactly the same manner as we treated the Minister of Justice. If there are some technical questions he cannot answer he can get support from the others. He is the witness but he might need assistance.

The Chairman: We will start with the film, then.

Dr. Lavigne: The projection that we have today relates mainly to the questions on abortion that were raised in the Committee. These questions will be discussed by the doctors on the Committee. This is a projection showing the life of the fetus. Dr. Hurteau will explain this briefly.

Dr Hurteau: Monsieur le président, afin de faciliter la tâche de tout le monde, je vais m'exprimer en anglais, pour clarifier la situation ensuite, s'il le faut.

I shall present these very briefly in order to give us an idea of the problems we face in defining life or intrauterine life. I am aware of the fact that some of these may have been projected at other committee levels, and I shall describe them very briefly.

[Interpretation]

the decision that was taken, and that we should stick to that.

Mr. Rondeau: Mr. Chairman, we agreed on the fact that we would hear six witnesses. The fact that we are restricted to hearing six witnesses, is already a fairly severe restriction. The Committee is allowed to hear only six witnesses. I should add too that evidence given before other committees may be made available to us. I do not believe that we should limit evidence to the technical aspect of the question.

In my opinion, we should allow these witnesses to deal with this question thoroughly.

Mr. Cantin: Mr. Chairman, I believe that above all we should begin by listening to the witness to find out what he has to say, and gradually see what happens.

M. Valade: Nous devons voir les diapositives, recevoir des explications au sujet des graphiques, puis entendre la déposition du témoin principal. Certains auront peut-être des questions à poser, ce à quoi le comité ne voit pas d'inconvénient. Monsieur le président, je crois que nous pourrions commencer maintenant.

Le président: C'est bien.

M. Hogarth: Monsieur le président, je pense que le D^r Lavigne devrait avoir les mêmes égards que le ministre de la Justice. S'il y a des questions techniques auxquelles il ne peut répondre, il devrait pouvoir s'adresser à ses collègues, le cas échéant, même s'il est témoin.

Le président: Commençons alors par les diapositives.

Dr Lavigne: Les diapositives que nous avons touchent aux questions soulevées en comité au sujet de l'avortement; mes collègues médecins en discuteront d'ailleurs. Voici une diapositive sur la vie du fœtus. Le D^r Hurteau vous en donnera une brève explication.

Dr. Hurteau: Mr. Chairman, I will speak in English so as to make things easier for everyone and in order to clarify the situation later on, if necessary.

Je vous expliquerai brièvement ces diapositives afin de vous donner une idée des difficultés que pose la définition de la vie, particulièrement la vie intra-utérine. Quelques-unes d'entre elles ont peut-être été déjà projetées devant d'autres comités, aussi serai-je bref.

[Texte]

This slide presents an embryo of approximately five weeks which was expelled from one of our patients. You see the velvety attachments of the placenta which really attaches this embryo to the mother. You can see the sac and within the sac a small embryo or an early fetus. Some of our slides have been lost but we have very good projections which are reproductions from one of our very good science journals indicating some of the refinements of a pregnancy at six weeks.

This is a better view of the same gestation that we saw in the other sac, already showing some early development of the extremities, the budding of the fingers and some of the facial features, which seems rather surprising for a gestation of only six weeks. Twenty-five days after fertilization, already the heart chamber has been formed and is partly functioning.

Here the gestation has gone to approximately eight weeks, where we say that the end of the embryonic life has been noted and the beginning of the fetal period starts. This is a gestation of approximately eight weeks after ovulation. The fetus measures approximately an inch and one-eighth.

Few, if any, new major structures are formed thereafter and subsequent development consists of growth and maturation of the existing structures. Already the long bones are forming, and if you look very closely into some of the features of the feet will see early ossification centres as evidence that the bony development has started as early as it has here.

Now the gestation is more obvious; the extremities are forming quickly and we are now approaching the ten-week gestation period.

On the left-hand side is a gestation of 12 weeks and you see the dark strands in the arms and hands which are ossification centres which are more advanced, and at 16 weeks on the right-hand side is a very well-formed baby. At this time certainly the maturity of the internal structures have advanced to the point where, in another week or two, this baby may be moving to the point where the mother may feel it. Sophisticated equipment has documented heart sounds within the uterus even before this—as early as 12 weeks and even 11 weeks to my knowledge—by Dr. Harnne of Yale University.

This gestation at 18 weeks is moving. Reflex action has been noted in these fetuses through experimentation. The fact that this fetus is sucking its thumb at 18 weeks is a

[Interprétation]

Cette diapositive montre un embryon de cinq semaines environ, expulsé du corps d'une patiente. On voit les attaches, d'aspect velouté, qui relie le placenta à l'embryon, ainsi que le sac qui renferme l'embryon ou le fœtus dans les premiers stades de son existence. Certaines de nos diapositives ont été égarées, toutefois, nous en avons d'excellentes qui ont été reproduites à partir de photos parues dans une éminente publication scientifique: Elles montrent sous certains aspects le développement du fœtus à six semaines.

Voici une meilleure vue de l'aspect que prend le fœtus dans le sac. A noter le développement des extrémités, la formation des doigts et de certaines parties des traits du visage, ce qui est assez étonnant pour une gestation de six semaines à peine. Vingt-cinq jours après la fertilisation, le logement du cœur est déjà formé et fonctionne partiellement.

Cette diapositive fait voir la gestation à huit semaines; c'est la fin de la vie embryonnaire et le début de la période dite foetale, environ huit semaines après l'ovulation. Le fœtus mesure environ 1 $\frac{1}{8}$ pouce.

On n'y voit guère de nouvelles structures importantes; le développement postérieur consiste en la croissance et la maturation des structures existantes. Déjà, les longs os commencent à se former. Un examen attentif du pied fait voir les premiers centres d'ossification, preuve que le développement osseux est déjà commencé, même à ce stade hâtif.

Ici, la gestation est plus évidente encore. La formation des extrémités s'accélère; nous en sommes maintenant à la période de gestation de 10 semaines.

A gauche ici, on voit un fœtus de 12 semaines; à noter les lignes noires dans les mains et les bras qui dénotent les centres d'ossification en développement; à droite, après 16 semaines, le fœtus est déjà assez bien formé. Sa structure interne est développée à tel point, certes, que dans 8 ou 15 jours, le bébé se fera sentir dans le sein de sa mère. On dispose même d'équipements précis qui permettent de percevoir dans l'utérus des battements de cœur quand le fœtus n'a que douze semaines, ou même onze, selon le Dr Harnne, de l'université McGill.

Voici un fœtus de 18 semaines, il bouge déjà, ainsi que certaines expériences nous ont permis de le constater. Il sucera son pouce, par exemple. L'une des questions en ce qui

[Text]

reflex phenomenon and one of the questions about the viability and this kind of concept in these intrauterine fetuses may have to be determined by the simple nervous system evaluation through electroencephlogram in the intrauterine phase. I know of one neurologist in France who has documented early cerebral activity in the fetus at 18 or 20 weeks.

Now, most of us in the field of obstetrics and gynecology have gotten tremendously involved in the whole area of intrauterine life, and this is a brand new approach to our specialty. It is barely touched upon. We are learning more and more every day and every year, and to give you one example of tremendous transitions which have occurred in the last five years, for example, you see here—that pin was not swallowed, it is a marker—there is there an ossification of a foetus of approximately 24 weeks gestation known to be severely affected by the RH problem erythroblastosis. And I note from one of your previous briefs that this was discussed with Dr. Fraser from McGill University last year. This baby is destined not to survive unless something is done.

You were made aware last year of these new techniques of injecting blood by transfusing the foetus within the uterus, and this dye within the abdomen of the foetus indicates how this can be marked as it was in this instance. This was done a number of times and you see on this baby's abdomen two puncture marks which indicate the two areas where intrauterine transfusion was performed. In fact this baby had four. These are two marks and then approximately six weeks before birth it was induced and delivered, a very healthy live baby which is now three years old and doing exceedingly well.

This points to the fact that the whole area of intrauterine life and pattern is unknown to us and we would like to submit, because this has been documented at this Committee before, that this life that we are dealing with is truly a human life because genetically and biologically it can be nothing else, because once the union of the female and male eggs forms a conceptus, there is a built-in potential which can only be human in nature. So there is no doubt that it is human life.

The only question we have to resolve is when is this human life truly viable. There is a difference between intrauterine viability and extrauterine viability because even a baby born at term cannot survive by itself. It needs assistance. This is strictly as an intro-

[Interpretation]

concerne la viabilité et les réflexes du foetus intra-utérin est parfois résolue grâce à l'électro encéphalogramme qui permet l'examen de l'appareil nerveux simple. Un neurologue français a mis en évidence une certaine activité cérébrale chez un foetus âgé de 18 à 20 semaines.

La plupart d'entre nous qui faisons de l'obstétrique et de la gynécologie s'intéressent énormément à toute la question de la vie intra-utérine. Voilà un point de vue entièrement nouveau en ce qui concerne notre spécialité. C'est un domaine tout nouveau. Nous en apprenons un peu plus toutes les semaines et tous les ans. Pour vous donner une idée des progrès énormes accomplis depuis cinq ans, vous pouvez voir ici,—cette épingle n'a pas été avalée, elle est simplement là pour marquer une partie de la photo,—l'ossification d'un foetus de 24 semaines environ, déjà gravement atteint par une maladie du système RH, l'érythroblastose. Un de vos mémoires indique que vous avez déjà discuté la question l'an dernier, avec le D^r Fraser, de l'Université McGill. Ce bébé-ci ne survivra pas à moins qu'on fasse quelque chose.

L'an dernier, on vous a mis au courant d'une nouvelle technique de transfusion sanguine qui permet au foetus de recevoir du sang dans l'utérus, et cette teinture, dans l'abdomen du foetus marque comment l'opération a pu se faire. Cela d'ailleurs a été fait un certain nombre de fois. Vous voyez ici sur l'abdomen de ce bébé deux perforations qui montrent les deux parties où ont été faites les transfusions sanguines intra-utérines. En fait, ce bébé en a eu quatre. Il y a ici deux marques, puis, environ six semaines avant terme, le bébé est né en parfaite santé; il a maintenant trois ans et il se porte comme un charme.

Ce qui prouve que tout le domaine de la vie intra-utérine est une *terra incognita*. Le Comité a déjà des documents là-dessus, la vie dont nous parlons est vraiment une vie humaine, car, génétiquement et biologiquement, il ne peut en être autrement. Une fois l'union des germes mâle et femelle accomplie, nous serons en présence d'une vie humaine, il n'y a aucun doute là-dessus.

Il n'y a qu'une question maintenant à résoudre: quand cet être humain est-il devenu viable? Il y a une différence entre la viabilité intra-utérine et la viabilité extra-utérine, car même un enfant né à terme ne peut survivre seul. Il a besoin d'aide. Mes observations

[Texte]

duction to some of the concepts that might have to be discussed.

The Chairman: Dr. Lavigne.

Dr. Lavigne: From what we saw we can point out that the foetus is a human being at 25 days because there is a blood circulation at that time, and even the first life that you saw at six weeks is a completely formed foetus. So the doctors will have to make a decision on that human being. As you can see, it is a field of medicine that is going into intensive research, and the problem of the doctors in those committees will be to determine if they are allowed to stop this natural evolution of a

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living human person. Things like identifying thumb prints have been proved, and separate RH factors, meaning really that the foetus is different from the mother, and is really a different person.

I would like now to go into the brief. I am going to make it as short as possible. It is not very long, and I will give you a resumé at the end. I will give it to you in French.

As you know, the Association of Medical Boards are the ones who are going to be responsible to form those committees in hospitals. The medical board is the medical authority in the hospital, and they have to form the committees and name the people on them. That is why this question involves us so much.

Le Bureau Médical est l'organisme qui dans chaque hôpital, groupe tous les médecins qui y pratiquent. Dernièrement, à la suite de la présentation du projet de loi sur l'avortement, notre association a consulté tous ses membres, soit par écrit, soit lors de réunions, pour discuter ce projet de loi. Les directeurs ont étudié toutes les opinions émises et il leur fait plaisir de vous émettre leurs conclusions à propos de ce projet de loi.

Au sujet de l'avortement

Les médecins du Québec, car nous sommes une association principalement provinciale, croient que tout avortement est un homicide, à l'heure actuelle, car le foetus est un être humain vivant, comme l'a prouvé le docteur Hurteau. Dans l'état actuel de la science médicale le foetus est un être humain vivant, et il a droit à la vie comme tous les êtres humains. Même en justice, le foetus est considéré comme un être humain à part entière, car il a part aux droits successoraux et que l'État se permet de considérer encore

[Interprétation]

étaient en guise d'introduction à certaines des conceptions dont il faudra discuter.

Le président: Docteur Lavigne.

Dr Lavigne: D'après ce que nous avons vu, nous pouvons constater que le foetus est un être humain à vingt-cinq jours, parce qu'il y a circulation du sang, et à six semaines, le foetus est complètement formé. Le médecin aura donc à prendre une décision à partir du fait qu'il s'agit d'un être humain. Donc, vous pouvez voir que c'est un domaine de la médecine qui fait l'objet de recherches intensives. Le problème qui se pose aux médecins membres de ces comités est de savoir s'ils ont le

droit de mettre fin à l'évolution naturelle d'un être humain. Des choses comme l'identification de l'empreinte du pouce, le fait que le foetus a son propre facteur RH, ont prouvé que le foetus est un être humain différent de la mère, donc, une autre personne.

J'aimerais dire un mot maintenant du mémoire. Je vais être bref, autant que possible. Ce n'est pas un très long mémoire et je vais vous en faire le résumé à la fin. Je vais en donner lecture en français.

Comme vous le savez, l'Association des conseils médicaux sera responsable de la formation de ces comités dans les hôpitaux, le conseil médical est l'autorité médicale à l'hôpital, et il doit constituer les comités et en nommer les membres. C'est pourquoi cette question nous intéresse au plus haut point.

The medical board is a body made up of all doctors who practice in a hospital. Recently, following the presentation of the Bill concerning abortion, our Association asked its members, in writing or during meetings, to discuss the bill. The directors then studied all opinions submitted, and they are pleased to inform you of their conclusions concerning this bill.

On the subject of abortion

We of the Association, which is mainly provincial, believed that, at the present time, an abortion is a homicide, because the foetus is a living human being, as proven by Dr. Hurteau. Medical science as it now stands considers that a foetus is a living human being having the right to life like other human beings. Legally, a foetus is considered as a full-fledged human being, since it is entitled to inherit property, and the State still considers non-therapeutic abortions as a crime liable to a sentence of life imprisonment.

[Text]

l'avortement non thérapeutique comme un crime passible d'emprisonnement à perpétuité.

Il est universellement admis, par les obstétriciens, que les cas d'avortements thérapeutiques qui sauveraient réellement la vie de la mère sont extrêmement rares et diminuent de plus en plus avec les progrès scientifiques. Par contre, l'avortement pratiqué dans le but d'améliorer la santé et le bien-être de la mère, ou de prévenir la naissance d'un malformé possible devient un acte de plus en plus demandé et que plusieurs qualifient d'euthanasie sociale. Si on peut tuer un malformé pendant qu'il est dans le sein de la mère, pourquoi ne pourrait-on pas le faire quand il est en dehors de celui-ci?

Toutefois, l'avortement pratiqué alors que la vie de la mère est mise en danger par la grossesse, peut être considéré dans ce cas, non plus comme une mesure d'euthanasie mais comme un cas de légitime défense. Or, les indications médicales précises où il faudrait sauver la vie de la mère, c'est-à-dire tuer le fœtus, sont extrêmement rares. Connaissant la rareté de ces cas, on peut même se demander si une loi est justifiée de le permettre.

Dans les endroits où il est accepté, l'avortement thérapeutique est pratiqué, d'après les statistiques officielles publiées, beaucoup plus pour des raisons psychiatriques discutables, et avec des résultats également discutables, que pour sauver la vie de la mère. Le projet de loi sur l'avortement nous oblige en fait à nous demander si nous sommes disposés à accepter certaines formes de meurtre dans notre société. A cause des abus que ce projet de loi sur l'avortement peut apporter, notre association s'est opposée à la légalisation de l'avortement thérapeutique, dans les cas où l'unique motivation de la santé et du bien-être de la mère est impliquée. Pour un cas où la vie de la mère est en danger, elle est acceptée.

De plus, même si nous croyons que les médecins qui ont autorisé les quelques avortements thérapeutiques qui ont eu lieu, ne sont pas nécessairement des criminels, de l'avis unanime des médecins, nous croyons toutefois que la législation projetée multipliera les avortements clandestins, comme c'est prouvé au Japon. En légalisant l'avortement thérapeutique dans les cas où la grossesse serait susceptible de mettre en danger la vie ou la santé de la mère, le gouvernement crée l'impression que toute motivation personnelle puisse procurer l'avortement. De cette façon, les demandes augmenteront énormément. Toutefois, suivant les normes médicales, les

[Interpretation]

Obstetricians are unanimous in saying that therapeutic abortions that would really save a mother's life are very few and their number is constantly decreasing as science continues to progress. In the other hand, abortions performed with the purpose of improving the mother's health and well-being, or of preventing the birth of a child that is possibly malformed is an act that is increasingly requested and that many refer to as social euthanasia. If we believe it right to kill a malformed child in the mother's womb, why then should we not be allowed to do so outside the womb?

However, when the mother's life is endangered by her state of pregnancy abortion then may be considered a case of legitimate defence. Now, specific medical indications where the mother's life ought to be saved, i.e. kill the foetus, are extremely rare. In view of this, one may wonder whether it would be justified for an Act to permit this.

In those places where this is accepted, therapeutic abortions are practiced, according to published official statistics, much more for questionable psychiatric reasons, and with equally questionable results, than to save the life of the mother. The bill dealing with abortion obliges us to ask ourselves whether we are willing to accept certain forms of murder in our society. Because of abuses which could be brought about by this Bill, our Association is opposed to the legalization of therapeutic abortion in cases where the health and well-being of the mother are the sole motivation. We accept it though when the mother's life is in danger.

Moreover, even if we believe that those doctors who have authorized those therapeutic abortions that have been carried out are not necessarily criminals, doctors are unanimous however in believing that the proposed bill will increase the number of clandestine abortions, as proven in Japan. By legalizing therapeutic abortion in those cases where the mother's life is liable to be endangered due to pregnancy, the government creates the impression that any personal reason is a basis for obtaining an abortion. This way, requests for abortion will increase enormously. However, according to medical standards, the committees dealing with thera-

[Texte]

comités d'avortement thérapeutique devront décider des indications sur une base qui sera principalement d'origine psychiatrique ou sociale.

Les indications psychiatriques motivant les avortements sont refusées par un grand nombre de médecins et de psychiatres.

Toutefois, les effets de l'avortement chez une femme sont souvent néfastes et produisent chez-elle des sentiments de culpabilité et d'hostilité qui sont souvent plus sérieux que le bienfait obtenu par l'avortement, ou que les réactions psychiatriques ou psychologiques secondaires à une grossesse non-désirée. Il faut se demander si en réglant un problème nous n'en créons pas un autre.

Lors de notre enquête nous avons constaté que la plupart des Bureaux Médicaux et des Conseils d'Administration des hôpitaux de la Province de Québec, (car plusieurs Conseils d'Administration se sont prononcés aussi), se sont opposés officiellement et formellement à la création de ces comités d'avortement thérapeutique, dans leur propre hôpital. Il répugne énormément aux médecins d'hôpitaux de faire partie de tels comités et plusieurs refusent, quant à eux de procéder à tout avortement thérapeutique.

Il faut noter que ce projet de loi ne tient pas compte des convictions personnelles des médecins et des hôpitaux qui craignent de se trouver exposés à des recours en justice pour n'avoir pas pratiqué ce qu'ils considèrent comme non acceptable dans leur éthique professionnelle. Les médecins travaillent toujours pour protéger les patients de la mort.

Or, nous nous demandons si ce projet de loi n'aggrave pas le problème des avortements clandestins. Or nous trouvons nécessaire de n'aborder la question de l'avortement qu'après des études scientifiques plus poussées en cours actuellement et nous nous demandons s'il ne serait pas préférable à l'heure actuelle d'envisager la légalisation de la stérilisation et de la contraception, ce qui n'est pas fait encore, avant que toute autre proposition gouvernementale soit complétée.

Maintenant, je voudrais résumer ces idées. Nous sommes d'accord qu'un amendement au texte actuel du code criminel soit apporté afin que les médecins ne soient pas considérés comme des criminels. Nous sommes d'accord sur une procédure d'étude des cas par des Comités d'Avortement Thérapeutiques dans chaque hôpital désigné. Nous sommes d'accord que les médecins qui ont décidé, après étude sérieuse dans leur comité, d'autoriser un avortement thérapeutique ne doivent pas être

[Interprétation]

peutic abortions will have to decide on the reasons on a basis which will be mainly psychiatric or social.

Psychiatric reasons for abortion are turned down by a great number of doctors and psychiatrists.

However, the effects of abortion are often detrimental to women and create guilt and hostility complexes in the mother and this is often worse than what can be obtained by abortion, or than the secondary psychiatric or psychological reactions due to an unwanted pregnancy. We should ask ourselves whether in trying to solve one problem we do not create another problem.

When we carried out our survey we realized that most of the medical boards and of the boards of directors—several boards of directors also expressed their views—of the hospitals of Quebec are opposed to the setting up of committees to deal with therapeutic abortion within their own hospitals. Doctors in the hospitals are extremely reluctant to be part of such a committee and many refuse to carry out therapeutic abortions.

It must be noted that this bill does not take into account the personal conviction of physicians and hospitals who fear that they might be liable to legal proceedings for not having practised that which they consider as not acceptable as far as their own professional ethics are concerned. Medical doctors are always concerned with protecting their patients against death.

Now, we wonder whether this bill will not increase the problem of clandestine abortion. We find it necessary to tackle this matter of abortion only after completion of very detailed scientific studies which are undertaken at the present time and we wonder whether it would not be advisable at the present time to consider drafting legislation of sterilization and contraception, which has not yet been done, before any other government proposals be enacted.

I would like to summarize these ideas. We agree that an amendment to the present Criminal Code should be made so that doctors are not considered as criminals in this matter. We agree on a procedure whereby committees on therapeutic abortion study cases in each designated hospital. We agree that doctors who agree, on the basis of serious study within their committee, to authorize therapeutic abortion should not be treated as guilty according to the Criminal Code.

[Text]

traités comme coupables selon le Code criminel.

Toutefois, nous croyons: Que seule la recherche médicale scientifique apportera la vraie solution à cette discussion et nous favorisons la formation de tout comité d'étude. Que l'avortement, dans l'état actuel de la science médicale, demeure le meurtre d'un être humain vivant, le docteur Hurteau nous l'a montré. Que tout médecin ou hôpital doit être libre de refuser sa participation à cette technique médicale, et ceci n'est pas mentionné dans la loi. Que, cette technique impliquant la vie d'un être humain, la décision ne doit pas être laissée à la seule volonté de la patiente.

Nous sommes contre un projet de loi qui crée, au sein de la population, de faux espoirs. A l'heure actuelle, les gens ont l'impression que l'avortement va être libéralisé et qu'il sera facile de l'avoir. Les patientes mettront les médecins dans une position de marchandage vis-à-vis de leur avortement. Nous demandons de plus que les hôpitaux habilités à faire des avortements thérapeutiques soient désignés par le Collège des Médecins de chaque province afin que soit assurée la qualité des normes établies. Nous sommes contre le fait de permettre l'avortement à des «hôpitaux accrédités», parce que c'est un terme un peu vague; un hôpital peut se voir refuser son accréditation non pas pour une question de qualité médicale, mais pour des raisons physiques, comme des escaliers de sauvetage, ou de telles choses. Il y a des hôpitaux où le personnel est extrêmement compétent et extrêmement qualifié, qui ont vu leur accréditation refusée pour des questions mineures de locaux, qu'ils ne peuvent même pas régler eux autres mêmes.

Or, puisque la question de santé est de juridiction provinciale, qu'au niveau provincial le Collège des Médecins, et le Ministère provincial de la santé détiennent l'autorité, nous croyons que cette question devra être remise entre leurs mains et que ce sera à eux de décider quels seront les hôpitaux qui devront avoir de ces comités d'avortement thérapeutique.

Pour conclure, nous sommes contre le texte actuel du projet de loi, et nous désirons qu'il soit amendé afin d'en restreindre les indications aux cas de danger sérieux à la vie de la mère. Le problème se trouve dans le texte de loi en haut de la page 43,

c) a déclaré par certificat qu'à son avis la continuation de la grossesse de cette personne du sexe féminin mettrait certainement ou probablement en danger la vie ou la santé de cette dernière,

[Interpretation]

However, we believe that only scientific medical research will bring a true solution to this problem and favour any committee set up to study the problem. Dr. Hurteau has proven to us that abortion, in the present state of medical science, remains the murder of a living human being. Any doctor or hospital should be free to refuse to participate in this medical technique and this is not mentioned in the bill. Since this technique has to do with the life of a human being, the decision should not be left up to the sole will of the patient.

We are against a bill that creates false hopes among the population. A lot of people think right now that abortion is going to be liberalized, that it will be easy to obtain. The patients will put doctors in a position of having to bargain or haggle with respect to their abortion. Moreover, we ask that hospitals which are entitled to carry out therapeutic abortions be designated by the College of physicians of each province to ensure the quality of established standards. We are against the fact of allowing "accredited hospitals" to carry out abortions, because this is a rather vague term: a hospital can have its accreditation refused not for a question of medical quality, but for physical questions like, for instance the fire escape, and so on. There are some hospitals whose staff is extremely competent and qualified, who have had their accreditation refused for minor questions which have to do with the premises, and which they themselves are unable to settle.

Now, since the question of health is a provincial matter, and that at the provincial level authority rests with the provincial Minister of Health and the College of Physicians, we believe that this matter will have to be left up to them and they should decide what hospitals should be entitled to have these therapeutic abortion committees.

To conclude, we are against the present text of the bill and we wish to see it amended to limit the reasons for abortion to cases where there is a serious danger to the life of the mother. The problem is stated in the bill, on page 43:

(c) has by certificate in writing stated that in its opinion the continuation of the pregnancy of such female person would be likely to endanger her life or health,

[Texte]

or, voilà une porte ouverte à toutes les indications psychiatriques, sociales ou autres que les gens voudront donner. On pourra toujours trouver un moyen pour fournir des indications pseudo-sociales, pseudo-psychiatriques, pour obtenir un avortement. Or c'est l'équivalent de ce que demande l'article sur l'avortement. A l'heure actuelle, le texte de loi se lit:

would or would be likely to endanger her life or health,

We would prefer this to be limited to "to endanger her life", or at least "to endanger seriously her health".

Les termes employés laissent une porte ouverte à des problèmes, à des discussions. Le gros problème de ces Comités d'Avortement Thérapeutique c'est que les psychiatres, parmi lesquels un certain nombre admettent n'importe quelles indications psychiatriques, demanderont aux gynécologues-obstétriciens de procéder à des avortements quand ceux-ci auront refusé de le faire. Cette provision servirait aussi au marchandage, les patientes essayant de trouver un médecin qui fait leur affaire.

A ce moment, les normes seront extrêmement fragiles, et nous aurons le problème de deux poids deux mesures à certains endroits. Cela a été prouvé aux États-Unis.

A New York même, je connais deux hôpitaux situés à quelques rues de distance l'un de l'autre. Or, un hôpital fait un avortement sur vingt cas d'accouchement, et l'autre en fait un sur six mille. Je pense donc que cette situation créerait un problème aussi grave. A mon avis, l'idéal serait la loi actuelle, légèrement modifiée pour prévenir que les médecins soient poursuivis s'ils décident de procéder à un avortement. Nous ne pensons pas qu'il soit nécessaire d'en arriver à un texte de loi aussi large que le texte proposé.

Maintenant, j'aimerais que certains médecins qui sont plus compétents que moi sur la question, parlent des indications psychiatriques qui seront le gros problème de ces Comités d'Avortement Thérapeutique. Le D^r Walsh, est ici à ma droite, et j'aimerais lui demander de nous parler des indications psychiatriques ainsi qu'au D^r Boisvert. Le D^r Maughan aussi qui est gynécologue, pourrait nous parler des problèmes apportés par les indications psychiatriques à ces comités.

Mr. Chappell: Mr. Chairman, may I interrupt on a point of order. The doctor has given legal opinion in stating that legally it is a

[Interprétation]

Now, this leaves a door open to all social, psychiatric, or other reasons that people will choose to give. There will always be a way of obtaining pseudo-psychiatric or pseudo-social reasons to obtain an abortion. Now, this is the equivalent of what the clause on abortion requests. At the present time, the bill reads as follows:

mettrait certainement ou probablement en danger la vie ou la santé de cette dernière,

Nous aimerions mieux que ceci soit limité à «mettrait en danger la vie», ou du moins «mettrait sérieusement en danger la santé».

The terms used leave the door open to problems, and discussions. The major problem regarding these therapeutic abortion committees is that psychiatrists, among whom some admit any kind of psychiatric reasons, would ask the gynaecologists and obstetricians to carry out abortions when those physicians have refused to perform them. This provision would also allow for a certain amount of bargaining as far as the patients are concerned because they will try to find a doctor who will agree to such an abortion. This will bring problems that will give rise to a double standard in certain cases.

In New York I know two hospitals that are located just a few streets from each other. Now one hospital carries out one abortion for every 20 deliveries and the other one carries out one abortion for every 6,000 deliveries. Therefore, I think that this situation would be creating a problem that is just as serious. In my opinion, the ideal would be the present bill, slightly modified to prevent physicians from being prosecuted should they decide to carry out an abortion. We do not believe that we should have such an elaborate bill as the present one.

I would now like some of the doctors who are more competent than I am in this area, to speak of the psychiatric indications which will be the main problem of those therapeutic abortion committees. We have as a witness, Dr. Walsh, sitting on my right. I would like him and Dr. Boisvert to speak of the psychiatric indications. Dr. Maughan, who is also a gynaecologist, could speak about the problems brought about by the psychiatric indications for those therapeutic committees.

M. Chappell: Monsieur le président, me permettez-vous d'interrompre et d'invoquer le règlement? Le médecin nous a donné une opi-

[Text]

human being. He has referred to it as murder—again a legal opinion. He has suggested that it be limited to a case where there is serious danger to the life of the mother. I think this is wrong. We agreed to accept technical advice in respect of the drafting. To hear this evidence is equivalent to our allowing others into the legislative chamber to join the argument to help form the parliamentary decision. That is wrong. We as the legislators

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must make the over-all decision. We should have advice from technical experts as to whether we have said it correctly but we cannot invite others in to tell us how to think and to tell us how to decide. That is our responsibility in the House and we are sitting here in committee as part of the House and I object to this type of evidence.

Mr. Valade: Mr. Chairman, may I speak on a point of order. I think the objections raised by Mr. Chappell are not acceptable because he concludes that the opinions expressed by Dr. Lavigne do not pertain to the technical aspect of the bill.

I maintain that they do concern the performing of the doctors' duties with respect to the law that we are actually studying. The doctor has said that there are other paramedical, medical and psychiatric relations with this problem, and they are speaking precisely in reference to one of the paragraphs on page 43 that Dr. Lavigne has mentioned. It concerns directly the technical and scientific aspects of the Bill.

We are not here to define. We have the Minister of Justice and his experts who will give a definition of "murder", or any of those words, in legal terms. We are concerned with the technical aspects of the Bill. In all fairness, these people are not here to decide for us what we are going to do. They are here to give us their opinions as doctors, specialists, psychiatrists and gynaecologists.

I do not know why the Committee should try to put itself in the position of adopting a closed mind attitude to this very important Bill. That would be judged by the public as a very serious breach of Parliamentary rules and freedom of discussion.

Committees have been established to go into the full details of all legislation. I do not think the argument raised by Mr. Chappell is worth consideration, and I think, with all respect, we should hear the specialists who are here on technical matters. Dr. Lavigne has

[Interpretation]

nion juridique et nous a dit que juridiquement il s'agit d'un être humain. Il a parlé de meurtre, c'est encore une opinion juridique. Il a donné à entendre qu'on ne parle plus désormais que des cas où la vie de la mère est sérieusement en danger. Je ne pense pas que ce soit bien. Nous avons convenu d'accepter des avis techniques, en ce qui concerne la rédaction de notre loi. Entendre un témoignage de ce genre c'est de permettre à d'autres qu'à nous de discuter une question sur laquelle nous fondons notre décision législative. C'est à nous législateurs à prendre les décisions. Nous devrions obtenir des opinions de spécialistes afin de le dire correctement, mais on ne peut pas permettre qu'on nous dise comment il faut penser ni dans quel sens il faut nous décider. Nous sommes ici en comité parlementaire et je n'aime pas du tout ce genre de témoignage.

M. Valade: Monsieur le président, j'invoque le Règlement. Je crois que les objections de M. Chappell ne sont pas acceptables parce qu'il conclut que les opinions du Dr. Lavigne ne touchent pas les aspects techniques du bill.

Pour moi, il s'agit de l'exécution des devoirs du médecin par rapport à la loi que nous sommes en train d'examiner. Le médecin nous a dit qu'il y a d'autres aspects médicaux, para-médicaux et psychiatriques; il parlait notamment d'un des alinéas à la page 43, mentionné par le Dr. Lavigne, qui a trait aux aspects techniques et scientifiques du projet de loi.

Nous ne sommes pas ici pour définir les termes. Le ministre de la Justice et ses fonctionnaires définiront pour nous le meurtre ou tout autre terme qui nous intéresse. Mais ce qui nous intéresse ce sont les aspects techniques du bill. Et, en toute justice, ces gens ne sont pas venus ici pour décider pour nous ce que nous allons faire. Ils sont venus nous dire leurs opinions à titre de médecins, psychiatres, gynécologues, etc.

Je ne vois pas pourquoi le Comité doit refuser d'examiner plus avant un bill aussi important que celui-là. Après tout le parlement est libre de discuter ces questions.

Les comités ont été formés pour examiner en détail toutes les lois. Je ne pense pas que l'objection de M. Chappell soit défendable. Et, en toute déférence, nous avons avec nous des spécialistes qui viennent nous donner des témoignages techniques. Le Dr. Lavigne a sou-

[Texte]

raised one technical aspect concerning psychiatry and the effects that this Bill will have on psychiatric problems of that sort. I do not see why we should object to hearing Dr. Walsh.

Mr. MacGuigan: Mr. Chairman, perhaps we could proceed, with a caution to witnesses that what we are interested in is the technical aspect of the Bill and not the substance.

I agree with Mr. Chappell that we did agree in advance that we would not hear witnesses on the substance of the legislation, because that has already been done by the Health and Welfare Committee. If we were to begin that there would be witnesses by the hundreds from all over the country seeking to appear before us on the substance of these important questions.

The witness we have just heard strayed at least from time to time, into the policy area. Perhaps we should caution the other witnesses and ask them not to do this; but that we would like to hear their evidence on the technical points.

Mr. Gilbert: Mr. Chairman, on a point of information. Did Dr. Lavigne, or any of his associates, appear before the Standing Committee on Health and Welfare when the matter of abortion was discussed?

Dr. Lavigne: No, we did not appear because the study was not done. We wanted to do a good study, consult the people and put the material before committees. We did research; we had letters and reports; and we had meetings. All those things, when they were collected, were put before committees.

This morning the problem is that those doctors who are with me are going to work on those committees, and you wanted to find out how these committees are going to work.

I think it is very important that you know how new legislation is going to work out in hospitals. Most of you are not doctors and you would not want to have trouble with legislation like that. Those are the doctors who are going to be faced with the problem in hospitals; I did not bring any other doctors. I brought the ones who are mainly involved—the gynecologist and the psychiatrist, who are going to be involved in those committees.

[Interprétation]

levé un aspect technique relatif à la psychiatrie et des effets du projet de loi en ce qui concerne les problèmes psychiatriques. Je ne sais pas pourquoi nous devrions nous opposer à entendre le Dr Walsh.

M. MacGuigan: Monsieur le président, nous pourrions peut-être dire aux témoins de ne nous parler que des aspects techniques de la question, et non pas des aspects juridiques, comme on dit.

Je suis d'accord avec M. Chappell que nous nous étions mis d'accord que nous n'entendrions pas de témoins sur la matière du bill, parce que cela a déjà été fait par le Comité de la santé et du bien-être social. Si nous commençons ça, nous risquerions d'en entendre des centaines. J'ai l'impression que le témoin s'est mêlé un petit peu d'une question de principe, nous aimerions même entendre leurs témoignages sur les aspects techniques de la question.

M. Gilbert: Monsieur le président, à titre d'information, est-ce que le Dr Lavigne et ses associés ont comparu au Comité permanent de la santé et du bien-être social lorsque l'avortement a été discuté?

Dr Lavigne: Non. Nous voulions faire une étude, mais le médecin qui avait été chargé de cette étude n'avait pas eu le temps de la terminer. Nous avons donc fait ces recherches, nous avons reçu et envoyé des lettres, des rapports, nous avons eu des réunions et tous ces renseignements sont arrivés trop tard.

Quel est le problème qui nous occupe ce matin? Les médecins qui sont avec moi vont faire partie de ces comités et nous voulions savoir exactement comment ces comités vont fonctionner. Il est très important que vous sachiez comment votre loi va être appliquée dans les hôpitaux. La plupart d'entre vous n'êtes pas médecins, vous n'aimeriez pas avoir des ennuis avec des mesures législatives de ce genre. Ces médecins auront à faire face à un problème dans les hôpitaux; je n'ai pas amené d'autres médecins. Nous avons ici des gynécologues et des psychiatres qui vont surtout être mis en cause dans ces comités.

[Text]

If you want to find out who they are, I may say that they are very well known, by other doctors, and the fact that they have been put in charge of gynecology departments of universities is enough to show you the seriousness of their thinking.

The Chairman: Mr. Rondeau?

Mr. Rondeau: Monsieur le président, je crois qu'à ce stage, si on commence à invoquer le Règlement pour toutes sortes de raisons, on n'en finira jamais. On veut trop restreindre les témoins; tantôt, on ne pourra même plus les consulter sur la technique et encore moins sur la substance. Même si nous sommes des

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législateurs, nous ne sommes pas des médecins. Moi, je ne suis pas un médecin, et le public en général doit consulter souvent les médecins. C'est pourquoi on devrait laisser les témoins parler et non pas dire qu'il faudra en convoquer cent ou peut-être cent cinquante autres. Actuellement, le comité est restreint au chiffre de six.

Si on ne veut pas laisser parler les témoins qui sont ici ce matin, ou d'autres, c'est peut-être parce qu'on a un peu peur de la vérité; on veut jouer entre la technique et la substance.

Monsieur le président, il y a plusieurs points techniques du Bill que je ne peux pas résoudre moi-même. Je trouve assez ridicule le fait qu'on ne puisse pas poser des questions aux témoins, d'une façon sérieuse. Par exemple, à la page 42 du Bill, et quatre ou cinq autres fois dans le Bill, on parle de l'avortement d'une personne du sexe féminin. Je n'ai jamais vu un avortement d'une personne du sexe masculin.

Si on ne peut pas entrer dans les détails, on ne pourra pas informer le public qui, demain, devra juger ce Bill. Parce que nous sommes des législateurs, nous ne pourrions pas avoir l'opinion de certains médecins! On a peur actuellement de l'opinion des médecins, parce que, peut-être, ils ne favorisent pas entièrement le Bill. Mais, ils parlent comme médecins, et non pas comme législateurs.

Monsieur le président, nous devons cesser de vouloir restreindre les témoins, parce qu'ils sont déjà restreints au nombre de six.

[Interpretation]

Je pense que vous pourriez les interroger sur leur réaction, et ce sont des médecins très distingués, très bien connus de leurs confrères, très bien connus notamment dans les universités où se trouvent certains d'entre eux. Ce qui montre à quel point ils sont sérieux sur cette question.

Le président: Monsieur Rondeau?

Mr. Rondeau: Mr. Chairman, I believe that if we start raising points of order for all kinds of reasons at this stage, there will be no end to it. I think we are restricting the witnesses a little over much. I think we are trying to restrict the witnesses too much; in a little while we shall not even be able to consult them on technical matters and even less

on substantive matters. Though we are law-makers, we are not doctors. I am not a doctor, and the general public often has to consult doctors. That is why I think we should let the witnesses give evidence rather than saying that we might have to hear 100 or 150 others. At the present time the Committee has restricted the number of witnesses to six.

If you do not want the witnesses who are hear to talk, this morning or allow others to do so, it may be because we are somewhat afraid of the truth, and we play around with distinctions between technical matters and substantive matters.

Mr. Chairman, the bill has several technical aspects which I cannot solve myself. I find it rather ridiculous that we cannot be allowed to question witnesses seriously. For instance, on page 42 of the Bill, and in four or five other instances in the Bill, reference is made to the abortion of a person of the female sex. I have never seen an abortion of a person of the male sex.

If we cannot go into the details of this matter, we shall not be able to inform the public which, tomorrow, will have to judge this bill. Because we are law-makers, we should not be able to have the opinion of certain doctors. Right now, we are afraid of the doctors' opinion because they may perhaps not favour the bill 100 per cent. But, they are speaking as doctors and not as law-makers.

Mr. Chairman, we must cease to try to restrict the witnesses, because they are already limited to the number of six.

[Texte]

Ces honorables messieurs doivent être laissés libres de dire au moins la vérité, même si, à certains moments, nous pensons qu'ils s'éloignent de la technique. Si nous, nous pensons juger de la substance, eux, ils sont encore sur le plan technique dans leur point de vue.

M. Cantin: Je pense que mon ami n'est pas avocat; ce n'est pas un défaut, remarquez bien. Nous avons peut-être une déformation professionnelle. Je ne suis pas médecin. Nous avons des gens devant le comité; nous avons déjà eu le témoignage de l'Association médicale canadienne qui représente 25,000 médecins. Nous avons entendu, ce matin, le témoignage de l'Association des bureaux médicaux des hôpitaux de la province de Québec.

Nous sommes ici comme législateurs. Nous pouvons comparer les textes des deux témoignages: c'est notre fonction. Nous ne voulons pas limiter les renseignements dont nous avons besoin; à l'heure actuelle, nous avons un témoignage.

Quant à la substance même, c'est à chacun des députés de décider de son vote, qu'il soit pour ou contre un amendement à l'avortement. Nous avons des points à faire valoir, nous devons étudier la portée des amendements en rapport avec le texte actuel. Ce n'est pas nouveau l'avortement; il existe dans le code actuel.

L'autre jour, nous avons eu un témoin, invité par le comité, qui nous a dit que le texte des amendements restreint davantage les cas d'avortements que le texte de la Loi actuelle. C'est ce que nous avons à analyser, je crois. Si on veut en finir et en sortir, on doit limiter nos témoins aux renseignements dont nous avons besoin. Nous avons déjà entendu trois témoins, dont un médecin ce matin.

Si on continue à ce rythme, on va bientôt dépasser le nombre de six. Il faut considérer ce facteur aussi.

M. Valade: Lorsque le ministre de la Justice vient témoigner, on le considère comme un témoin. Des experts sont invités à donner des précisions sur certains commentaires du ministre. S'il fallait tenir compte de ces experts, nous aurions déjà entendu quatre témoins. Le docteur Lavigne a dit dans sa déposition qu'il y avait des facteurs psychiatriques qui entraient en jeu. Alors, pourquoi ne pas entendre un psychiatre pour clarifier la position du docteur Lavigne?

Actuellement, on perd du temps à discuter; on retarde les témoins qui sont très occupés.

[Interprétation]

We should let these gentlemen tell us the truth even if, at times, we think they stray away from technical matters. Whereas we intend to deal with the substantive aspects of the matter, their viewpoint remains at the technical level.

Mr. Cantin: I do not think that my friend is a lawyer, although, mind you, this is not a shortcoming. We may be subject to professional idiosyncrasy. I am not a doctor. We have witnesses here, and we have already received the evidence of the Canadian Medical Association representing 25,000 doctors. This morning, we have heard the evidence of the Association of Medical Boards of the Hospitals of the Province of Quebec.

We are here as law-makers and it is our task to compare the texts of both types of evidence. We do not want to limit the information we need, and right now, we have some evidence.

As far as the substance of the matter is concerned, it is up to each of the members to decide how he is going to vote, whether they be for or against an amendments to this abortion legislation. There are a number of points we wish to press and we must study the full significance of the amendments in relation to the present text. As you know, abortion is not new; it is dealt with in the present Code.

The other day, we had a witness with us here, who was invited by the Committee, who told us that the text of the amendments is more restrictive in the case of abortion, than the text of the present Act. That is, I believe, what we must analyze. If we want to get through with this, we shall have to restrict our witnesses to giving the information which we require. This morning, we have already heard three witnesses, including one doctor.

If we go on at this rate, we will go beyond six pretty soon. We must also take that factor into account.

Mr. Valade: When the Minister of Justice is here to give evidence, he is considered as one witness only. But he has experts which are called upon to provide details on certain aspects of statements made by him. If we were to include these experts, we would have four witnesses. Dr Lavigne said in his statement that there were psychiatric factors involved. Then why should we not listen to a psychiatrist who could clarify Dr. Lavigne's position?

Right now, we are wasting time by discussing this, we are delaying the witnesses who are very busy people.

[Text]

Si le Comité ne veut pas tenir compte de leur point de vue, il en décidera ainsi. Mais, pourquoi empêcher ces témoins de donner leur point de vue sur les problèmes relatifs au Bill?

An hon. Member: Let us hear Dr. Walsh.

The Chairman: Mr. McQuaid?

Mr. McQuaid: Mr. Chairman, perhaps we could proceed on the basis suggested by you. I think it is a very fair one.

You have pointed out to the witnesses that they should not stray too far from the subject on which they are here to give evidence. I think they will try to do that.

I think we all realize it is very, very difficult for anyone to express an opinion without straying a little beyond the confines of what he is supposed to confine himself to, but I think we can depend on the witnesses to follow the advice of the Chairman. Perhaps we could now proceed and hear Dr. Walsh?

The Chairman: Is the Committee agreeable?

Some hon. Members: Agreed.

Dr. Lavigne. All right. Before Dr. Walsh speaks, if anyone wants details regarding what has been accepted by the Canadian Medical Association, I would point out that the texts sets out that if the continuation of the pregnancy will endanger the life or health of the pregnant woman or there is a substantial risk that the child may be born with a grave mental and physical disability, so it is not exactly...

Mr. Cantin: On a point of order. We have already had the testimony of the Canadian Medical Association. I think we can interpret it.

Dr. Lavigne: May I get a word in here?

An hon. Member: Let us hear from Dr. Walsh, Mr. Chairman.

The Chairman: Yes. So that we know where we are going, it is my understanding and I believe it is the understanding of the Committee that we are not here to hear arguments pro and con on abortion. This is not the purpose of this meeting. The purpose of this meeting is to hear the views of learned doctors as to the feasibility of the clauses from a practical standpoint; how the boards will operate in hospitals and the matter of accredited hospitals; the question perhaps of

[Interpretation]

If the Committee does not want to take their point of view into account, it is up to us to decide. But why should we prevent these witnesses from giving evidence on problems relating to the bill?

Une voix: Laissez parler le docteur Walsh.

Le président: Monsieur McQuaid?

M. McQuaid: Monsieur le président, nous pourrions peut-être continuer.

Vous aviez raison je pense de mettre les témoins en garde, tout à l'heure. Il ne faut pas s'écarter de la question en discussion.

C'est une question extrêmement difficile et il est très difficile de donner une opinion sans s'écarter un tout petit peu du cadre étroit qui lui est prescrit. Je pense que nous pouvons compter sur les témoins pour se conformer aux directives du président. Nous pouvons peut-être continuer maintenant et entendre le Dr Walsh?

Le président: Le comité ne voit pas d'inconvénient?

Des voix: D'accord.

Dr Lavigne: Très bien. Avant que le Dr Walsh ne parle, s'il y a en a qui veulent des détails sur ce qui a été accepté par l'association médicale du Canada, je signale que le texte dit que si la continuation de la grossesse met en danger la santé ou la vie de la mère, et s'il y a risque grave que l'enfant naisse avec une infirmité mentale ou physique.

M. Cantin: J'invoque le règlement. Le comité a déjà reçu le témoignage de l'association médicale du Canada et nous pourrions apprécier nous-mêmes.

Dr Lavigne: Puis-je placer un mot ici?

Une voix: Est-ce que nous ne pourrions pas entendre le Docteur Walsh. Monsieur le président?

Le président: Pour que nous sachions où nous allons, je crois comprendre ce que dit le comité et que nous ne sommes pas ici pour entendre le pour et le contre de l'avortement. Ce n'est pas le but de la réunion. Il s'agit d'entendre les médecins de haut-savoir nous donner le point de vue sur le côté pratique des discussions; comment le comité pourrait fonctionner dans les hôpitaux. Nous éclairer sur la question de la définition d'un hôpital accrédité; comment les médecins interprètent-

[Texte]

interpretation by doctors of the word "health" and the question perhaps of clandestine abortions. If the witnesses would restrict their testimony to this narrow field they would then be within the ruling of the Committee.

I believe Dr. Walsh is going to give evidence pertaining to psychiatric reasons for abortion and possibly allied subjects. I will ask Dr. Walsh and the other doctors who give evidence to restrict themselves as much as possible to the actual clauses before the Committee starting on page 42.

Mr. Chappell: Mr. Chairman, I have raised a point of order. I am anxious to reply to some of the comments made, if I might do so, please.

Mr. Valade: It was decided we would hear the witnesses first.

Mr. Chappell: Mr. Chairman, Mr. Valade says this is a serious matter and I agree. However, in the Justice Committee it is a much more serious matter that we follow rules, rules that every person knows and understands. We could establish a very dangerous precedent indeed in committee if we were to deviate from the procedure that the witnesses are here to advise us technically.

Mr. Rondeau suggested that perhaps we are afraid to hear the doctors. Certainly I am not afraid to hear the doctors if they advise us on the medical points, but when doctors start to advise us on legal matters or to put themselves in a position where they are literally sitting in the legislature when they were not elected—

Some hon. Members: Oh, oh.

The Chairman: Order, please.

Mr. Chappell: The next point which I think is important is that if we stray too far each member here can be pressured by other doctors who want to come and give contrary opinions. If this were to happen the matter could go on forever. I say with respect that I think Dr. Lavigne should consult with the other doctors if he is unable to answer something, as the Minister of Justice did. The Minister of Justice did not bring in a battery of experts and set each one off to describe certain things. He gave all his evidence and then in the questioning, and only in the questioning, if there was something he could not answer he would turn—and this was usually at our request—to somebody else. He did not

[Interprétation]

ils le terme «santé», et la question des avortements clandestins. Les témoins devraient s'en tenir, je pense, strictement à ce domaine s'ils veulent demeurer dans les limites permises par le Comité.

Je crois que le docteur Walsh, va nous donner des renseignements sur les motifs psychiatriques d'avortement et d'autres questions connexes. Je demanderais au docteur Walsh et aux autres de s'en tenir dans toute la mesure du possible aux dispositions que nous avons sous les yeux à partir de la page 42.

M. Chappell: Monsieur le président, si j'ai soulevé un point du règlement, c'est que j'aurais voulu répondre à quelques-uns des commentaires qu'on avait fait.

M. Valade: Il a été décidé que nous allions entendre d'abord les témoins.

M. Chappell: Monsieur le président, M. Valade nous dit que c'est une question grave et j'en conviens volontiers. Cependant, en ce qui concerne le Comité de la Justice, il est encore plus important de se conformer aux règlements que chacun de nous connaît et comprend. Nous pourrions établir ici de très graves précédents si nous nous écartions de la procédure voulant que les témoins sont ici pour nous conseiller sur des questions techniques.

Selon M. Rondeau nous craignons peut-être d'entendre ce que les médecins ont à nous dire. Je n'ai certainement pas peur d'écouter les médecins, surtout lorsqu'ils nous conseillent sur des questions d'ordre médical, mais quand ils commencent à nous donner leurs avis sur des questions juridiques, ou de se comporter de telle façon qu'on les croirait membres de la Chambre . .

Des voix: Oh, oh.

Le président: A l'ordre, s'il vous plaît.

M. Chappell: Le troisième point est important. Il ne faudrait pas s'écarter de la question. Si nous nous écartons trop de la question, chacun d'entre nous pourra être l'objet de pression de médecins qui voudront ici donner des opinions contraires. Si l'on permettait cette chose, la question pourrait se prolonger indéfiniment. Je pense que le docteur Lavigne devrait consulter d'autres médecins, s'il ne peut pas répondre aux questions comme l'a fait le ministre de la Justice. Le ministre de la Justice n'est pas venu ici accompagné d'une troupe de spécialistes leur demandant à tour de rôle, de décrire certains aspects. Il a exposé tout son point de vue et c'est seulement au cours de l'interrogatoire qu'il a con-

[Text]

have them all set up to sell the bill, so to speak.

Mr. Hogarth: Mr. Chairman, if I may speak on that. I think we are quibbling a bit. I think I agree with both contenders on the points about the witnesses, and I agree principally with Mr. Chappell. I think if we have questions that we want to ask this witness and he requires the assistance of the other doctors, they can advise him and in certain circumstances they can even give the answers, as was the case with the Minister of Justice. We are going to have seven, eight or nine witnesses, not just one, and this gentleman is the witness this morning and he

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should be the one who primarily answers. If he needs assistance he can get it from the others.

The Chairman: Mr. Valade, and this will be the last remark on this subject.

Mr. Valade: Mr. Chairman, may I ask a question of our main witness? Is he in a position to tell us the psychiatric implications of this legislation? If he is not, I would like him to ask one of his colleagues to explain that to us.

The Chairman: Dr. Lavigne is the witness and the meeting is now open for questions. If he needs technical assistance from his associates he can turn to them and they can supply the answers. The meeting is now open for questions.

Mr. Valade: I asked a question of Dr. Lavigne.

Dr. Lavigne: I will turn that question over to Dr. Walsh because he is a psychiatrist.

The Chairman: Just a moment, please. What is the question?

Mr. Valade: My question, Mr. Chairman, was what are the effects of this legislation regarding psychiatric responsibility in reference to the proposed amendment to the Criminal Code relating to abortion?

The Chairman: Which section are you referring to, Mr. Valade?

Mr. Valade: I am referring to the amendments that we are dealing with, Mr. Chairman, Clause 18 on page 42 and the following paragraphs.

The Chairman: Which page is that on?

[Interpretation]

sulté ses collaborateurs, généralement à notre demande. Il ne les avait pas mobilisés tous pour vendre le projet de loi, en quelque sorte.

M. Hogarth: J'ai l'impression que nous coupons les cheveux en quatre. Je partage les avis qu'on a exprimé, jusqu'ici, de part et d'autre mais je suis un peu plus de l'avis de M. Chappell. Si nous voulons entendre ce témoin, et qu'il fasse appel à d'autres médecins ils peuvent le conseiller et même, dans certaines circonstances, répondre exactement comme l'a fait le ministre de Justice. Nous aurons sept ou huit ou neuf témoins, et pas seulement un, et c'est ce monsieur qui est le témoin ce matin et c'est surtout à lui qu'on devrait poser des questions. S'il a besoin de l'aide il peut l'obtenir de ses confrères.

Le président: Monsieur Valade, et ce sera la fin du sujet.

M. Valade: Puis-je poser une question, monsieur le président, à notre témoin principal? Peut-il nous dire quels effets aura cette mesure, du point de vue psychiatrique? S'il est incapable de nous le dire il pourrait demander à un de ses confrères de nous l'expliquer.

Le président: Le témoin sera le docteur Lavigne. La réunion est ouverte aux questions. S'il a besoin d'assistance technique, d'un de ses associés, il donnera la réponse.

M. Valade: J'ai posé une question au Dr. Lavigne.

Dr. Lavigne: Je vais passer la question au docteur Walsh, un psychiatre.

Le président: Un moment s'il vous plaît. Quelle est la question?

M. Valade: La question est, quels sont les effets de cette loi en ce qui concerne les responsabilités psychiatriques par rapport à l'amendement au code criminel?

Le président: De quelle section voulez-vous parler?

M. Valade: Je parle des amendements que nous traitons à la page 42, l'article 18, et les alinéas qui suivent.

Le président: Quelle page?

[*Texte*]

Mr. Valade: I will refer particularly, Mr. Chairman, to subparagraph (c) on page 43, regarding the dangers of abortion in relation to the health of the mother. This certainly contains some psychiatric references and I would like Dr. Lavigne to explain the effects of this.

The Chairman: Dr. Walsh, it is on page 43 of the bill.

Dr. N. Walsh (Psychiatrist, St. Mary's Hospital, Montreal, Quebec): Mr. Chairman, ladies and gentlemen, as has been stated the matter of recommendations for abortions in hospital will certainly be largely the responsibility of psychiatrists. There are many psychiatrists, of which I am one—and I can also quote Professor Karl Stern—who do not recognize that in our present state of psychiatric knowledge there are any clinical indications for abortion. I will quote Dr. Stern, who is a renowned psychiatrist:

I have never in my entire practice. .

Mr. Gilbert: Mr. Chairman, on a point of order. Is this witness going to give his opinion with regard to the technical or administrative aspects of the bill or is he going to go into the substance? He appears to be going into the substance. For a year and a half the Standing Committee on Health and Welfare studied the problems in relation to abortion. He and his group had an opportunity to appear at that time but they did not do it. They just cannot come here at this time and bring evidence through the back door which should properly have been presented before the Standing Committee on Health and Welfare.

Mr. Valade: Let the witness finish and we can judge that afterwards, Mr. Gilbert.

Mr. Gilbert: I think he should appreciate that we want his opinion with regard to the technical and administrative aspects. We do not want any policy statements with regard to it.

Dr. Walsh: As an example, let me bring up a point. If you have a request for an abortion from a patient and you have psychiatrists on the panel, as you inevitably will have in any hospital, and at the present time these psychiatrists—and here I not only speak for myself, I speak for others as well—do not recognize there are psychiatric indications, the patient will then be refused an abortion. It seems to me this will create considerable difficulties.

[*Interprétation*]

M. Valade: Je vais me référer tout particulièrement au sous-alinéa (c) en page 43 où l'on parle des dangers d'avortement en rapport avec la santé de la mère et ceci présente des incidences psychiatriques, et je demanderais que le docteur Lavigne nous dise quels sont les effets?

Le président: D^r Walsh, ça se trouve à la page 43 du bill.

Dr N. Walsh (Psychiatre à l'hôpital St-Marys-Montreal, Qué.): Monsieur le président, mesdames et messieurs, comme on l'a dit, la question des recommandations pour les avortements au sein des hôpitaux est certainement la responsabilité des psychiatres. Il y a plusieurs psychiatres, j'en suis un moi-même, et je peux citer également le docteur Karl Stern, qui ne reconnaissent pas que dans l'état actuel de la science psychiatrique, il y ait des recommandations cliniques pour l'avortement. Ici je citerai le D^r Stern qui est un psychiatre renommé:

Je n'ai jamais au cours de ma pratique ...

M. Gilbert: Monsieur le président, j'invoque le Règlement. Ce témoin va-t-il nous donner son avis en ce qui concerne les aspects techniques ou administratifs du bill, ou va-t-il parler du fond du problème? Il semble discuter de la substance. Nous avons discuté de ce problème de l'avortement au comité permanent de la santé et du bien-être pendant un an et demi. Lui et son groupe avaient la possibilité de comparaître, ils ne l'ont pas fait. Ils ne peuvent pas venir ici, à ce stade, entrer par la porte de derrière et donner des témoignages qui auraient dû être présentés au comité permanent de la santé et du bien-être.

M. Valade: Laissons le témoin terminer et nous pourrions juger après.

M. Gilbert: Il devra se rendre compte que ce que nous voulons, le seul avis en ce qui concerne les aspects techniques administratifs du problème. Nous ne voulons pas de déclarations de principe à cet égard.

Dr Walsh: Je veux seulement vous donner un exemple. Si vous avez une demande d'avortement de la part d'une patiente et vous avez des psychiatres sur le panel comme ça se fait inévitablement dans tout hôpital, et présentement ces psychiatres, je ne parle pas seulement en mon nom, mais au nom de tous les autres aussi, ne reconnaissent pas l'existence chez la patiente, l'indication psychiatrique, on lui refusera l'avortement. Cette situation sera la cause de bien des difficultés.

[Text]

Many patients will come to us and there will be a considerable amount of conflict about this. For example, certain psychiatrists may say, "Yes, there are indications", and others will not. There is tremendous conflict

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in the psychiatric profession about this.

The Chairman: This is the point. Other psychiatrists may say other things.

Mr. Gilbert: What you are really doing is expressing a personal opinion. That is no different from the law profession or any other profession.

The Chairman: Mr. Valade on a point of order.

Mr. Valade: Dr. Lavigne made it very clear in his opening statement that the medical boards will have to decide, if this legislation goes through, if there is a reason for allowing an abortion. There will be doctors, gynaecologists and psychiatrists on these medical boards and I believe that Dr. Walsh's answer is necessary because he has just raised the point that there may be some difficulties in applying the law. This is a practical matter, and I think we should hear Dr. Walsh and stop wasting the time of this Committee on technicalities.

Dr. Walsh: I would like to state—and obviously, I have to admit, other psychiatrists may have different views—that this is a problem that the administration of the law is going to encounter.

The Chairman: Yes, Dr. Walsh, and this is exactly what we want to hear, as I understand the feeling of the Committee—that is, the feasibility of this type of board and your views on its practicality and how it will work if this legislation passes. I think this would help the Committee, so long as you do not get into a philosophical discussion relative to abortion itself. Would you now proceed?

Dr. Walsh: There is at the present time a considerable body of psychiatric opinion which states that it is impossible to prove that either neurosis or psychosis can be prevented by abortion. This has been illustrated in several studies.

On the contrary, neurosis and psychosis can be provoked by abortion, and this has nothing to do with the individual patient's religious or moral philosophy. Here I am talking on psychological grounds. In other words, it has been our experience that, irrespective

[Interpretation]

Nombreuses seront les demandes d'avortement et par conséquent bien des conflits. Il y aura des conflits parce que certains psychiatres pourront dire que l'état de la patiente indique la nécessité de l'avortement, d'autres diront le contraire, ce qui causera de sérieux conflits d'opinion dans la profession

psychiatrique.

Le président: C'est là la question? C'est une opinion personnelle que vous exprimez.

M. Gilbert: Ce que vous dites à présent ce n'est qu'une opinion personnelle. Ça ne diffère pas du droit ou de toute autre profession.

Le président: Monsieur Valade, j'invoque le règlement.

M. Valade: Le Dr Lavigne l'a clairement indiqué dans son exposé préliminaire que les corps médicaux devront décider, au cas où la loi est adoptée, si l'avortement est justifiable. Il y aura des psychiatres, des médecins, des gynécologues, dans les conseils médicaux et je crois qu'il nous faut la réponse du docteur Walsh, car il a soulevé la question en disant qu'on pourra difficilement appliquer la loi. C'est une question pratique. Nous devrions entendre le Dr Walsh et cesser de perdre du temps pour des raisons techniques.

Dr Walsh: J'aimerais dire, et probablement d'autres psychiatres ont un point de vue différent, je dois l'admettre, que cela est le problème que vous allez rencontrer.

Le président: Si je comprends bien, c'est ce que nous voulons entendre ici, c'est-à-dire, la possibilité d'établir une telle commission, ainsi que votre opinion sur son caractère pratique et son fonctionnement si la loi est adoptée. Cela sera utile au comité tant que vous n'entrerez pas dans une discussion philosophique sur l'avortement lui-même. Je vous laisse la parole.

Dr Walsh: Il y a pas mal d'opinions psychiatriques diverses à l'heure actuelle selon lesquelles il est impossible de prouver qu'une névrose ou une psychose peut être empêchée par l'avortement. Ceci a été illustré dans plusieurs études.

Au contraire la névrose et la psychose peuvent être provoquées par l'avortement et ceci n'a rien à voir avec les principes religieux ou moraux de la malade. Je parle ici de raisons psychologiques. Notre expérience a prouvé que, quel que soit le point de vue moral de la

[Texte]

of the patient's moral viewpoint, an abortion, in fact, is psychologically harmful. Therefore, many psychiatrists who accept this viewpoint would be reluctant to recommend abortion.

On the practical side, the psychiatrist on the committee may find himself in the presence of a gynecologist who is in favour of abortion, or the gynecologist may find himself increasingly requested to perform abortions—and I think this is a very important point—by a committee which is composed mainly of psychiatrists.

As you know, in other countries the obstetric indications for abortion seem to be declining, whereas the increasing indications, or alleged indications, are on psychiatric and social grounds. You may have the position occurring where you have the department of obstetrics constantly receiving recommendations, "The committee has recommended abortion for psychiatric reasons on the following grounds..." I can certainly foresee the great danger of obstetrical departments in certain hospitals being inundated with recommendations for abortions on psychiatric grounds.

In other hospitals abortions on psychiatric grounds will not be accepted at all, because many, many psychiatrists, as I say, will not accept such grounds.

This may, or may not, be the kind of problem with which you are concerned, but it seems to me to be a practical one that is going to be encountered.

The Chairman: Mr. Hogarth?

Mr. Hogarth: Dr. Walsh, to get down to some of the technical aspects of this, there are mental conditions which are latent in many people—neuroses, schizophrenia and the accompanying paranoia. That can be the situation relative to any woman, be she young or in child-bearing age.

Under certain social conditions with a pregnancy occurring the trauma of the pregnancy itself can trigger the mental instability of the patient. Is that not so?

Dr. Walsh: Yes; but I would like to elaborate a little on my reply because a simple yes is not adequate. A patient may have a depression, just as, for example, a patient has pneumonia. If you have a woman who has pneumonia and also happens to be pregnant you do not treat the pneumonia by aborting her. You treat the pneumonia. In the same way, if a woman becomes pregnant and develops a depression you treat the depression; you do not abort her.

[Interprétation]

malade, les effets psychologiques de l'avortement sont mauvais. Donc plusieurs psychiatres qui acceptent ce point de vue hésiteront à recommander l'avortement.

Du côté pratique, un psychiatre qui fait partie d'un comité peut se trouver face à un gynécologue qui est pour l'avortement ou le gynécologue peut avoir de plus en plus de demandes d'avortement et c'est un point très important dont doit tenir compte un comité qui comprend surtout des psychiatres.

Comme vous le savez, dans d'autres pays les facteurs obstétriques favorables à l'avortement sont à la baisse tandis que les facteurs sociaux et psychiatriques, eux sont à la hausse. On pourra avoir une telle situation lorsque le département d'obstétrique recevra constamment des recommandations à l'effet que «Le Comité a recommandé l'avortement pour des raisons psychiatriques et pour les raisons suivantes:». Donc, on peut prévoir que les départements obstétriques de certains hôpitaux vont être inondés de recommandations d'avortement pour des raisons psychiatriques.

Dans d'autres hôpitaux, l'avortement pour des raisons psychiatriques ne sera pas accepté, parce que beaucoup de psychiatres n'acceptent pas ces raisons. Ceci est peut-être le genre de problème qui vous intéresse, je n'en sais rien, mais en fait c'est le genre de problème que nous allons rencontrer.

Le président: Monsieur Hogarth.

M. Hogarth: Pour en revenir aux aspects techniques, il y a des conditions mentales latentes chez beaucoup de personnes, la schizophrénie, la névrose et la paranoïa qui les accompagnent. Telle peut être la situation chez une femme jeune ou assez âgée pour avoir des enfants. Dans certaines conditions sociales, une grossesse peut déclencher l'instabilité mentale de la malade. Est-ce que ce n'est pas le cas?

Dr Walsh: Oui, mais j'aimerais développer ma réponse parce qu'un simple «oui», ça ne suffit pas. Une malade peut avoir une dépression, comme, par exemple, on peut avoir une pneumonie. Si vous avez une femme qui a une pneumonie et est aussi enceinte, vous ne traitez pas la pneumonie par l'avortement; vous traitez la pneumonie. De la même façon, si une femme devient enceinte et fait une dépression, vous traitez la dépression, et vous ne l'avortez pas.

[Text]

Mr. Hogarth: I appreciate that that might be...

Dr. Walsh: It is an extremely important point. In fact, clinically, it is a critical point;

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because I have myself treated many patients who have been pregnant and developed depressions.

Mr. Hogarth: Yes; I appreciate that there are instances in which the resulting mental condition can be treated without the necessity of performing an abortion.

Dr. Walsh: Yes.

Mr. Hogarth: That is true; and then there are other conditions in which the mental condition is so acute that it cannot be treated; is that not so?

Dr. Walsh: No, I do not accept that viewpoint.

Mr. Hogarth: You would not go so far as to say that there are mental conditions which no therapeutic means can cure?

Dr. Walsh: No, I would not say that; but I am saying that one of the therapeutic means is not an abortion. In fact, in our experience very often the abortion aggravates the condition rather than improves it.

Mr. Hogarth: It is in that realm that there is a conflict of psychiatric opinion?

Dr. Walsh: That is right.

Mr. Hogarth: There are many psychiatrists in the country who would suggest that one of the cures for the mental condition, the neurosis, which has developed would be an abortion. There is ample opinion of that.

Dr. Walsh: Yes, I would agree, among certain psychiatrists; but I think the burden of proof that in fact this is scientifically valid rests with them.

Mr. Hogarth: I appreciate that.

Dr. Walsh: Yes.

Mr. Hogarth: But this is a generally acceptable point of view, even though you may not agree with it?

Dr. Walsh: I would not go so far as to say that it is a generally acceptable view.

Mr. Hogarth: One of the things that concern me is the woman who develops a severe neurosis and endeavours repeatedly to commit suicide.

[Interpretation]

M. Hogarth: Je comprends que cela peut être ..

Dr Walsh: C'est un point extrêmement important; du point de vue clinique, c'est un

point critique. Je dois dire moi-même que j'ai dû traiter beaucoup de malades qui sont devenues enceintes et ont fait une dépression.

M. Hogarth: Je me rends compte qu'il y a des conditions dans lesquelles l'état mental peut être traité sans un avortement.

Dr Walsh: Oui.

M. Hogarth: Ça, c'est vrai. Il y a d'autres conditions où l'état mental est tellement grave qu'il ne peut pas être traité.

Dr Walsh: Moi, je n'accepte pas ça.

M. Hogarth: Vous ne voulez pas dire qu'il y a des conditions mentales qu'aucun moyen thérapeutique ne peut guérir?

Dr Walsh: Non, je ne dirais pas ça, mais l'avortement n'est pas un des moyens thérapeutiques. D'après notre expérience, l'avortement aggrave la condition plutôt que de l'améliorer.

M. Hogarth: C'est là où il y a un conflit dans les opinions psychiatriques.

Dr Walsh: C'est exact.

M. Hogarth: Beaucoup de psychiatres du pays pensent que l'une des cures aux conditions de névrose serait l'avortement.

Dr Walsh: Oui, chez certains psychiatres. C'est à eux de prouver que cela se défend au point de vue scientifique.

M. Hogarth: Je comprends.

Dr Walsh: Oui.

M. Hogarth: Mais c'est un point de vue accepté assez généralement, même si vous ne le partagez pas.

Dr Walsh: Je n'irais pas jusqu'à dire que c'est un point de vue accepté généralement.

M. Hogarth: Ce qui me préoccupe, c'est le cas d'une femme qui a une névrose grave et qui essaye de se suicider plusieurs fois.

[Texte]

Dr. Walsh: Yes.

Mr. Hogarth: On occasions you can get psychiatric evidence to the effect that an abortion is warranted to save that woman's mental health and, indeed, to save her life, in that instance?

Dr. Walsh: Yes.**Mr. Hogarth:** Is that not so?

Dr. Walsh: If I may I would just very briefly reply to this because I have given this matter some thought. In my experience, the patients who are so depressed—and this is a reply to your question—on discovering that they are pregnant and threaten suicide fall into two categories. In one case one is dealing with a genuine depressive episode, with strong suicidal impulses, and the treatment is the treatment of a serious depression, which one would also treat even if the woman were not pregnant.

The other common type of problem encountered is what we call hysterical blackmail—and I will have to explain a little what I mean by that. This is the patient who comes to you—and I have encountered this very often in practice—and says, "Doctor, if you do not give me an abortion I will kill myself." This is an extremely common problem that a psychiatrist will encounter in a big clinic in a general hospital.

I might point out here that the essence of clinical experience in psychiatry in the treatment of this kind of problem has been, classically, for the doctor to stand firm and not to give in to the patient's demands; because she may come to you in another circumstance and say, "Doctor, if I cannot leave my husband I will kill myself." It is the same type of thing. But in this case she is saying, "I will kill myself if you do not give an abortion."

The essence of clinical wisdom in psychiatry over the decades has been that with such a patient you do not yield to the blackmail, because then very often the patient will ultimately harm herself. Consequently, in this type of situation, to give an abortion just because she has said, "I will kill myself if you do not", is clinically unsound; and I believe many experienced psychiatrists would support this viewpoint.

Mr. Hogarth: I understand; thank you. I have certain questions for Dr. Lavigne.

I am interested, sir, in what is meant, in medical terms, by "miscarriage."

Dr. Lavigne: May I have Dr. Maughan, who is a chief gynecologist, answer this? He also

[Interprétation]

Dr Walsh: Oui.

M. Hogarth: Parfois, on peut prouver du point de vue psychiatrique qu'un avortement est justifié pour sauver la santé mentale et même la vie de cette femme.

Dr Walsh: Oui.**M. Hogarth:** Est-ce que ce n'est pas le cas?

Dr Walsh: Je voudrais répondre brièvement, parce que j'ai réfléchi à la question. La malade qui est déprimée de la sorte lorsqu'elle apprend qu'elle est enceinte veut se suicider. Il y a deux sortes de malades. Ou bien il s'agit d'un épisode dépressif avec des impulsions suicidaires et le traitement est un traitement que l'on donnerait pour une dépression même si la personne n'était pas enceinte. Maintenant, l'autre type de problème est ce que nous appelons le chantage hystérique. Je vais expliquer brièvement.

Il s'agit d'une malade qui vient vous voir. Cela m'est arrivé souvent. Elle vous dit, «Docteur, si vous ne me faites pas un avortement, je me tuerai». C'est un problème que l'on rencontre souvent dans une importante clinique d'un hôpital.

Je pourrais vous indiquer à ce stade que l'expérience clinique en matière de psychiatrie pour le traitement de ce genre de problème, c'est que le médecin doit être ferme, ne doit pas céder au chantage de la malade parce qu'autrement elle pourra revenir et vous dire, «Docteur, si je ne peux pas quitter mon mari, je vais me tuer». C'est le même genre de choses. Là, elle dira, «Je vais me tuer si vous ne me faites pas un avortement».

L'essence de la sagesse clinique en psychiatrie avec une malade de ce genre, c'est de ne pas céder au chantage parce qu'autrement la malade se fera du mal en fin de compte. Donc, dans ce genre de situation, donner un avortement simplement parce qu'elle dit, «Je vais me tuer si vous ne me le faites pas», ne serait pas raisonnable du point de vue psychiatrique et clinique et beaucoup m'appuyeraient.

M. Hogarth: J'ai quelques questions à poser. Docteur Lavigne, je voudrais savoir ce que l'on veut dire en termes médicaux par une «fausse couche»?

Dr Lavigne: Est ce que le Dr Maughan qui est un gynécologue peut répondre? Il a déjà

[Text]

has the experience of working on the committee on abortion. He could tell us his problems regarding this. You want to find out when there is a miscarriage and when it is an abortion?

Mr. Hogarth: There is absolutely nothing in the Criminal Code about the word "abortion". I want to know in medical terms what is meant by "the miscarriage of a female person". Perhaps the gynecologist...

Dr. Lavigne: And you would also like to know at how many weeks we would go for an abortion?

Mr. Hogarth: That may be encompassed by his answer.

Dr. Lavigne: I will ask Dr. Maughan to answer that question.

Dr. G. B. Maughan (Chief of Gynecology-Obstetrics Department, Royal Victoria Hospital, Montreal): Granting that I have another opportunity to discuss the whole gynecologic problem of abortion, I can answer your question about miscarriage by simply saying that it is the parlour term for "abortion".

"Abortion" is one of those words that until recently has not been used in public. "Miscarriage" is abortion—spontaneous abortion.

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Mr. Hogarth: Do I understand that if you were in a court of law and were asked to define "the miscarriage of a female person" you would interpret that in medical terms as the abortion of a female person.

Dr. Maughan: Spontaneous abortion.

Mr. Hogarth: I understand that an abortion is an operation which is possible within a given period of the pregnancy of the woman. Is that correct?

Dr. Maughan: Yes; in the sense that it is the termination of a pregnancy before viability.

Mr. Hogarth: I understand; and viability is at about what month—the fourth or the fifth?

Dr. Maughan: Legally it is defined as 28 weeks from the date of the last menstrual period. Actually, it should be 24 weeks, because we have kept 24½ week babies living. Perhaps it should be down to 20 weeks.

Mr. Hogarth: You are suggesting that the miscarriage of a female person, being the

[Interpretation]

fait partie du comité de l'avortement. Il pourra nous dire quels sont ses problèmes en la matière. Je crois que vous voulez savoir quand il y a un avortement et quand il y a une fausse couche.

M. Hogarth: Le Code criminel ne contient absolument rien sur le mot «avortement». Je veux savoir ce que le médecin veut dire par «fausse couche chez une personne de sexe féminin». Peut-être que le gynécologue...

Dr. Lavigne: Et vous voudriez aussi savoir jusqu'à combien de semaines nous irions pour un avortement?

M. Hogarth: Cela pourrait aussi être traité dans la réponse.

Dr. Lavigne: Je demanderais au Dr. Maughan de répondre à cette question.

Dr. G. B. Maughan (Chef du département de gynéco-obstétrique, Hôpital Royal Victoria, Montréal): Si je puis avoir une autre occasion de discuter du problème gynécologique de l'avortement, je peux répondre à votre question en disant que le mot fausse couche est ce que le public emploie communément pour désigner un avortement.

L'avortement est un des ces mots qui, jusqu'à présent, n'était pas utilisé chez le public. La fausse couche c'est un avortement spontané.

M. Hogarth: Donc, si vous étiez en cour et si vous devriez définir la «fausse couche chez une femme», vous diriez que c'est un avortement?

M. Maughan: Avortement spontané.

M. Hogarth: Je crois comprendre que l'«avortement» est une opération qui s'applique au cours d'une certaine période de la grossesse.

M. Maughan: Oui, dans le sens que c'est la termination de la grossesse avant la viabilité.

M. Hogarth: Je comprends, et un fœtus est viable vers le quatrième ou le cinquième mois?

M. Maughan: Légalement, 28 semaines après la dernière menstruation. En fait, cela devrait être 24 semaines parce que nous avons pu conserver en vie des fœtus de 24 semaines. On pourrait même réduire le chiffre à 20.

M. Hogarth: Vous proposez que la fausse couche d'une femme c'est-à-dire l'avortement

[Texte]

abortion of a female person, can only take place within the use of those terms.

Dr. Maughan: Prior to the stage of viability.

Mr. Hogarth: Which you suggest is perhaps the twenty-fourth week.

Dr. Maughan: We think it probably should be, although the 24 to 28 week immature neonates have very little opportunity to survive. The survival rate is around 5 to 10 per cent.

Mr. Hogarth: So when we are dealing with Section 237 of the Criminal Code, which refers to "everyone who, with intent to procure the miscarriage of a female person", in medical terms we are dealing with that first 24 weeks of pregnancy. Is that correct?

Dr. Maughan: And what you mean is abortion.

Mr. Hogarth: Yes. All right. After the first 24 weeks and prior to birth there are circumstances in which a child can be stillborn or can even be born alive by means of induced labour, is that not so?

Dr. Maughan: That is right.

Mr. Hogarth: What are the medical terms of that?

Dr. Maughan: Induction of labour.

Mr. Hogarth: Induction of labour, but suppose a spontaneous birth took place in the twenty-fifth week, a stillbirth...

Dr. Maughan: Premature labour.

Mr. Hogarth: ...what would that be called?

Dr. Maughan: Or immature labour.

Mr. Hogarth: Yes. As I understand it, that would not be called an abortion or a miscarriage. What would that be called in medical terms?

Dr. Maughan: Immature labour.

Mr. Hogarth: Immature labour resulting in—

Dr. Maughan: Delivery of an immature neonate.

Mr. Hogarth: I see.

Dr. Maughan: Immature is from 24 to 28 weeks and premature is from 28 weeks to 36 weeks.

[Interprétation]

d'une femme ne peut avoir lieu qu'au cours de ces semaines?

M. Maughan: Avant l'état de viabilité.

M. Hogarth: Ce qui est à votre avis, la vingt-quatrième semaine?

M. Maughan: Entre la 24^e et la 28^e semaine parce que des nouveau-nés si prématurés n'ont que peu de chance de survivre. Le taux de survivance n'est qu'environ 5 p. 100 à 10 p. 100.

M. Hogarth: Quant à l'article 237 du Code criminel qui précise que «quiconque avec l'intention de procurer l'avortement d'une personne du sexe féminin,» du point de vue de la médecine cela veut dire les 24 premières semaines de la grossesse, n'est-ce pas juste?

M. Maughan: Qu'est-ce qu'est un avortement?

M. Hogarth: D'accord, après les 24 premières semaines et avant la naissance, il y a des circonstances qui peuvent provoquer une mise au monde d'un enfant mort-né et même vivant au moyen d'un accouchement provoqué. N'est-ce pas juste?

M. Maughan: C'est cela.

M. Hogarth: Quels sont les termes médicaux?

M. Maughan: Accouchement provoqué.

M. Hogarth: Bon, un accouchement provoqué, mais supposons qu'une naissance prématurée a lieu dans la 25^e semaine.

M. Maughan: Accouchement prématuré.

M. Hogarth: Comment est-ce qu'on l'appellerait?

M. Maughan: Accouchement immature.

M. Hogarth: A mon avis, ce n'est pas un avortement ou une fausse couche. Quels sont les termes médicaux?

M. Maughan: Accouchement immature.

M. Hogarth: ...qui aura pour résultat...

M. Maughan: La naissance d'un enfant immature.

M. Hogarth: Je comprends.

M. Maughan: Entre 24 et 28 semaines, il s'agit d'un accouchement immature, entre 28 et 36 semaines d'un accouchement prématuré.

[Text]

Mr. Hogarth: Anybody who induced labour in a woman who was in her twenty-sixth week of pregnancy would not be procuring the miscarriage of that person?

Dr. Maughan: Technically, no; actually, yes, unless he was prepared to look after that neonate with the most beautifully equipped intensive nursery unit that you can imagine.

Mr. Hogarth: My point is that you have told us...

Dr. Maughan: I think we said yes until 28 weeks.

Mr. Hogarth: I am suggesting that after this period in which the miscarriage of the female person can take place, anybody that induced the labour of a woman with intent to have the child stillborn...

Dr. Maughan: Oh, no...

Mr. Hogarth: Just one moment. There might be drugs administered to a woman in that interim period of pregnancy with the intent to have that child stillborn. In medical terms that person would not be procuring the miscarriage of a female person because that can only take place within that earlier limited period of time.

Dr. Maughan: I would say that he is a murderer of the neonate.

Mr. Hogarth: Murder is another legal term which I would rather stay away from right now, but it would not be procuring a miscarriage?

Dr. Maughan: No.

Mr. Hogarth: I see. That is all I have.

The Chairman: Any further questions? Dr. Ritchie.

Mr. Ritchie: Dr. Maughan, do hospitals in the Province of Quebec now carry on therapeutic abortions? Are there any hospitals that do this?

Dr. Maughan: Yes. As you were told, I am gynaecologist-in-chief at the Royal Victoria Hospital. Therapeutic abortions are done at very, very few hospitals in the Province of

[Interpretation]

M. Hogarth: Donc, toute personne qui provoque l'accouchement à la 26^e semaine ne provoquerait pas une fausse couche.

M. Maughan: Théoriquement non, pratiquement oui, à moins qu'il puisse s'occuper de ce nouveau-né avec les cliniques bien équipées et des soins intensifs pour les prématurés.

M. Hogarth: Je pensais que vous aviez dit...

M. Maughan: Je répondrais oui jusqu'aux 28^e semaines.

M. Hogarth: Après cette période, durant laquelle la fausse couche de la femme peut avoir lieu, toute personne qui provoque l'accouchement d'une femme avec l'intention de procurer un mort-né.

M. Maughan: Bien sûr que non.

M. Hogarth: Un instant. Il y a peut-être des médicaments ordonnés à la femme au cours de cette période qui ferait que l'enfant soit mort-né. Du point de vue de la médecine, cette personne ne procurerait pas la fausse couche d'une femme parce que cela ne peut avoir lieu que pendant cette période de temps limitée.

M. Maughan: Je dirais que ce serait un meurtre du nouveau-né.

M. Hogarth: Meurtre, c'est une autre terme juridique un peu déplacé ici, mais ce ne serait pas une provocation d'une fausse couche.

M. Maughan: Non.

M. Hogarth: Je comprends, c'est tout.

Le président: D'autres questions? Monsieur Ritchie.

M. Ritchie: Monsieur Maughan, dans la province de Québec, est-ce que les hôpitaux pratiquent les avortements thérapeutiques maintenant, est-ce qu'il y a des hôpitaux qui le font?

M. Maughan: Oui, je suis gynécologue en chef de l'hôpital Royal Victoria. Les avortements thérapeutiques se font dans très peu d'hôpitaux dans la province de Québec, une

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Quebec and possibly at the most they are confined half a dozen, because it is a small community of hospitals that has no religious conviction about whether abortions should or should not be done. We necessarily probably do all of the medically indicated therapeutic

demi-douzaine, tout au plus, parce qu'il s'agit d'un petit groupe d'hôpitaux où il n'y a pas de convictions religieuses en ce qui concerne l'avortement. Il va de soi donc que tous les avortements thérapeutiques médicalement recommandés sont faits chez nous, c'est-à-dire

[Texte]

abortions for the Province of Quebec in these half a dozen hospitals.

Mr. Ritchie: Yes. So generally speaking the ones that do not do it base it on a religious belief.

Dr. Maughan: In the hospitals where they are not done it is probably on the basis of religious conviction, yes.

Mr. Ritchie: What is the method of consultation for a therapeutic abortion in your hospital? How many doctors are involved?

Dr. Maughan: I can answer that very easily by detouring slightly. At the Montreal General Hospital they have an abortions committee such as is described, except that it is a committee of, I think, half a dozen members.

In our own hospital we have felt that a standing committee is not the right answer. We have felt that we must have two strong recommendations from senior personnel in the specialty involved in the medical reason for the patient's abortion; in other words, if she is being aborted because of a bad heart—two senior cardiologists; if for a carcinoma of the breast that is going to flare during her pregnancy, two surgeons involved in breast surgery; if for psychiatric reasons, two senior consultants in psychiatry; and, in addition to that, two gynaecologists must agree that this should be done. And within our own hospital, the Royal Victoria, the gynaecologist in chief has ultimate veto, which he exercises with discretion.

Mr. Ritchie: That means that in any given case you have the attending gynaecologist plus two others involved in the specialty, where you feel there is danger to the mother.

Dr. Maughan: Plus another gynaecologist, plus the gynaecologist in chief.

Mr. Ritchie: Therefore, five people are, or may be, indirectly involved. Do you know of any smaller hospitals in which this procedure is carried on?

Dr. Maughan: It is very, very rarely that therapeutic abortions are done in the small hospitals—in the community hospitals. They feel that when such a problem arises it is, if you will, better referred to higher authority where there is a greater facility for getting the best possible opinion.

Mr. Ritchie: Is authority to carry these out provided for under the Quebec Hospital Act?

[Interprétation]

sont faits dans les six hôpitaux dont je parlais.

M. Ritchie: Donc, en général, ceux qui ne font pas d'avortements thérapeutiques se fondent sur les principes de religion.

M. Maughan: Ceux qui ne font pas d'avortements thérapeutiques se fondent probablement sur des principes religieux.

M. Ritchie: Quelle est la méthode de consultation pour un avortement thérapeutique dans votre hôpital. Combien de médecins s'en occupent?

M. Maughan: Je peux répondre très facilement. À l'hôpital général de Montréal, il y a un comité d'avortement tels que ceux qui figurent dans votre projet de loi sauf qu'il y a environ 6 membres. On était d'avis qu'un comité permanent ne constitue pas la bonne solution, mais qu'il faudrait avoir deux avis autorisés de médecins distingués chez nous, spécialisés dans les affections qui sont à l'origine de la demande d'avortement, par exemple, si l'avortement doit se faire pour affection cardiaque, deux chefs du service de cardiologie l'examineront. S'il s'agit d'un cancer de la poitrine qui se répand rapidement au cours de sa grossesse, nous avons l'avis de deux chirurgiens spécialisés dans la chirurgie de la poitrine. S'il s'agit de raisons psychiatriques, deux psychiatres expérimentés s'en occuperont. En outre, deux gynécologues doivent consentir à ce que cela doit être fait. Et au Royal Victoria, le chef du service de gynécologie a le droit de veto, qu'il exerce avec certaine discrétion.

M. Ritchie: Donc, dans tous les cas, il y a le gynécologue traitant plus deux autres spécialistes de l'affliction dont souffre la femme.

M. Maughan: Plus un autre gynécologue, plus le gynécologue en chef.

M. Ritchie: Alors, il y a cinq personnes qui s'en occupent indirectement. Connaissez-vous des plus petits hôpitaux qui suivent cette méthode?

M. Maughan: Les avortements thérapeutiques ne se font que rarement dans les petits hôpitaux, dans les hôpitaux des diverses petites localités. Lorsque des problèmes de ce genre se posent, on préfère s'en remettre à une autorité supérieure, où on a des meilleurs moyens d'obtenir les avis des plus autorisés.

M. Ritchie: Est-ce que la loi sur les hôpitaux du Québec prévoit ces mesures?

[Text]

Dr. Maughan: No, it is not; it is against the law; and we recognize that this is tolerance.

Mr. Ritchie: Yes, I understand.

Dr. Maughan: But we are ready and willing to answer for our tolerance, because of the indications that we use.

Mr. Ritchie: It is different from Ontario and Manitoba, I presume, where they seem to be allowed...

Dr. Maughan: Yes; there is nothing in the Hospital Act that permits us to do therapeutic abortions.

Mr. Ritchie: Studying these clauses, do you foresee any trouble in cases of threatened, or spontaneous or inevitable abortions, from an emergency point of view? How do you deal, for instance, with a woman who arrives at your hospital bleeding profusely but not yet aborted? Do you require all these consultations?

Dr. Maughan: No; when there is evidence of inevitability of abortion, or when the spontaneous abortion, by the very nature of the amount of bleeding involved, is going to threaten the woman's health or life, we go right ahead. Knowing that the abortion is inevitable, we will complete it to preserve her health and life.

Mr. Ritchie: Under this proposed Act, though, would it not seem as though every such case might have to have this board rule on it?

Dr. Maughan: No; because therapeutic abortion has a different connotation from the handling of a threatened, or inevitable abortion. An inevitable abortion is emergency procedure that has to be dealt with at the moment.

Mr. Ritchie: In the Province of Quebec, with your limited number of hospitals allowing therapeutic abortions and many outlying areas from which patients would have to

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travel quite a way to your larger hospital, do you feel that those who live close to the hospital have a better service than those who live far away?

Dr. Maughan: I think that is a very doubtful question in the Province of Quebec. At least one-third of the population is right in the area of Montreal. The numbers of therapeutic abortions done in Montreal in any given year would certainly be less than a

[Interpretation]

M. Maughan: Non, c'est contre la loi et nous reconnaissons qu'il s'agit ici d'une tolérance.

M. Ritchie: Oui, je comprends.

M. Maughan: Mais nous sommes prêts à justifier nos ordres par des indications que nous recueillons.

M. Ritchie: C'est différent en Ontario et au Manitoba, je présume, où il semble que cela soit légal.

M. Maughan: La Loi sur les hôpitaux ne prévoit pas de pratique d'avortement thérapeutique.

M. Ritchie: Si on examine ces dispositions, est-ce que vous pensez qu'il peut y avoir des ennuis en ce qui concerne les avortements éventuels, naturels ou inévitables, en cas d'urgence. Par exemple, que faites-vous si une femme qui a une hémorragie est transportée à l'hôpital sans être avortée? Est-ce que vous exigez toutes ces consultations?

M. Maughan: Non, si l'avortement paraît absolument inévitable, ou qu'une fausse-couche par la perte de sang risque de mettre en cause la santé ou la vie de la femme, nous intervenons tout de suite pour conserver sa santé et sa vie.

M. Ritchie: Mais on parle de cette loi-ci. Ne semble-t-il pas que tous ces cas exigent l'autorisation de ce conseil.

M. Maughan: Non. L'avortement thérapeutique veut dire autre chose que l'avortement éventuel ou inévitable. Dans ce dernier cas, il s'agit d'un cas d'urgence dont on ne peut s'occuper tout de suite.

M. Ritchie: Dans la province de Québec, où il y a assez peu d'hôpitaux qui exercent l'avortement thérapeutique et où, il y a certainement des régions isolées où le malade

devrait aller assez loin avant de se faire hospitaliser chez vous, dans ces cas-là pensez-vous donc que les gens qui habitent près de ces hôpitaux sont mieux servis que ceux qui habitent loin.

M. Maughan: C'est assez douteux. Le tiers de la population de la province de Québec se trouve justement à Montréal. Le nombre d'avortements thérapeutiques qui se pratiquent à Montréal dans une année sera certainement inférieur à une douzaine. Je ne pense pas que

[Texte]

dozen. I do not think this creates major hardship to outlying areas. Some of that dozen will be people from outlying areas who, for good medical reasons, are sent up to Montreal.

Mr. Ritchie: Thank you.

M. Rondeau: Je voudrais poser une question au témoin.

Si la proportion est d'une douzaine sur deux millions de cas, peut-on conclure qu'actuellement il n'existe à peu près pas de cas où une femme peut mourir parce qu'on n'a pas provoqué l'avortement.

Dr. Maughan: Very few women under good obstetrical care are going to die because they do not get a therapeutic abortion, yes.

Mr. Rondeau: Did you say that perhaps there might be about a dozen of them?

Dr. Maughan: There are probably 50,000 births annually in the area of Montreal, and possibly a dozen of those might not survive if they were not aborted.

M. Rondeau: J'aimerais maintenant poser une question au Dr. Walsh. Selon vos expériences dans la psychiatrie, une femme est-elle plus affectée par un accouchement normal non désiré, que par un avortement voulu?

Dr. Walsh: I would have to say from my experience that the majority or practically all, of the patients I have seen—all women who have had abortions—have suffered guilt reactions, or certain kinds of depression.

If you interview some of these patients immediately after they have the abortion they will very often say, "Well, I am glad it is over; it was a good thing". However, if you follow up these patients for a longer period of time, say for a year, or five years, you find the impact of what you might call unconscious guilt. In other words, they do carry, if you like, psychological trauma. It is like a wound that they suffer when they have an abortion.

On the other hand—and here I would like to mention something directly connected with this—many people say that it is much easier on an unmarried mother to have an abortion than to have the pregnancy and give up the baby. At St. Mary's Hospital in the last few years we have set up a clinic for unmarried mothers. Even though you cannot prove this statistically, or, indeed, under microscope—it is a psychological observation, if you like, on intuition—our experience has been that even in the case of the girl who has given up the

[Interprétation]

cela suscite de gros problèmes pour les régions isolées. Quelques-uns d'entre eux sont des gens qui habitent ces régions isolées qui sont envoyés à Montréal pour des bonnes raisons médicales.

M. Ritchie: Merci.

Mr. Rondeau: I would like to put a question to the witness.

If the proportion is one dozen for every 2 million cases, may we conclude that there are practically no cases at the present time where a woman can die because abortion has not been carried out?

M. Maughan: Il n'y a que très peu de femmes qui, en traitement d'un bon gynécologue, meurent parce qu'elles ne subissent pas d'avortement thérapeutique.

M. Rondeau: Vous avez dit qu'il pourrait y avoir une douzaine?

M. Maughan: Il y en a probablement cinquante milles naissances par année dans la région de Montréal, dont une douzaine de femmes pourrait ne pas survivre sans un avortement.

Mr. Rondeau: I would now like to put a question to Dr. Walsh. According to your experience in psychiatry is a woman more affected by a normal, unwanted delivery, than by a deliberate abortion?

M. Walsh: A cela, je dois répondre qu'autant que je sache, la plupart ou presque toutes les femmes que j'ai examinées, et qui ont subi un avortement ont souffert d'un sentiment de culpabilité, d'une certaine dépression. Il arrive souvent que lorsqu'on interviewe ces personnes juste après l'avortement, elles diront: «Je suis ravie que ce soit fini, c'était une bonne chose.» Cependant, si vous observez ces femmes pendant un certain temps, disons une année ou cinq ans, vous constaterez l'effet de ce que l'on appelle la culpabilité inconsciente. Autrement dit, elles souffrent d'un traumatisme psychologique, comme une blessure qu'elles subissent lors de l'avortement.

D'autre part, ajoutons ici quelque chose qui se rapporte directement à ce que je dis. Un grand nombre de personnes disent que c'est beaucoup plus facile pour une mère non-mariée de se faire avorter que d'avoir une grossesse pour renoncer à son bébé.

Depuis quelques années, nous avons créé une clinique à l'hôpital Sainte-Marie qui s'occupe des filles-mères. Il est impossible de fournir une preuve statistique ou microscopique, mais c'est plutôt une observation psychologique ou de l'intuition que nous avons cons-

[Text]

baby for adoption the over-all psychological effect has been much less severe than in those girls who have had abortions.

You might ask why. I can very briefly give an opinion on this. In the case of the girl who gives up the baby for adoption, even though, naturally, she suffers tremendously, it is a conscious giving-up; she actually goes through the suffering of giving up her baby. Whereas, in the case of the girl who has an abortion, very often the whole experience is pushed out of her mind. It is repressed or denied. This does not mean, however, that it does not continue to represent a burden of guilt which impairs the over-all quality of this girl's life.

This would be my reply.

M. Rondeau: Une dernière question au Dr Lavigne. Concernant les pages 42 et 43 du présent bill, je voudrais que vous nous disiez pourquoi on peut parler de l'avortement chez une personne du sexe féminin seulement. Y aurait-il un troisième, quatrième et cinquième sexe? Je pense que c'est une question technique, cela me dépasse, j'aimerais avoir des éclaircissements. Pourquoi dans ce bill, parlez-on de l'avortement chez une personne du sexe féminin seulement.

Dr. Maughan: Possibly I can answer that. In the context of present habit and dress it is extremely difficult to distinguish between the male and the female, and sometimes only an experienced gynaecologist can do so!

The Chairman: Mr. Deakon?

Mr. Deakon: Thank you, Mr. Chairman.

Perhaps Dr. Walsh could answer this question. There may be instances of inherent abnormalities occurring in a family. There may be situations where other children in a family have been born with certain deformities and the mother is again pregnant. At what stage can you ascertain whether or not this child will also be abnormal?

Dr. Walsh: Are you speaking of the psychiatrically abnormal, or the abnormal, generally? If you are speaking of physical defects, then I think it would be a problem for the gynaecologist, Dr. Maughan, to answer.

Mr. Deakon: Let we have the answer to that question first, and then I want to know about psychological defects.

Dr. Maughan: In the case of physical defects, sometimes you can tell on statistical evidence—genetic Mendelian trait—what is the likelihood of a woman having a fibrocystic diseased baby; on statistical evidence, you

[Interpretation]

taté que dans le cas d'une fille qui a fait adopter son bébé, l'effet psychologique général a été moins sévère que pour les filles-mères qui se sont faites avorter.

Vous pourriez demander pourquoi, je pourrais vous le dire très rapidement. La jeune fille-mère qui fait adopter son bébé même si elle en souffre beaucoup, elle renonce consciemment. Elle souffre vraiment de renoncer à son bébé tandis que dans le cas de la fille-mère qui se fait avorter, elle oublie souvent toute l'expérience qu'elle a vécu; elle la refoule ou la nie. Mais cela ne veut pas dire que l'expérience ne représente pas de fardeau de culpabilité qui atteint la vie en général de cette fille. Voilà ma réponse.

Mr. Rondeau: One last question to Dr. Lavigne. With reference to pages 42 and 43 of the present bill, I would like you to tell us why we speak of abortion of the female person only? Is there a third or fourth or fifth sex? This is a technical question, I think, it is beyond me. I would like to have some light thrown on this. Why does the bill refer to the abortion of a female person only.

M. Maughan: Je peux peut-être répondre à cela. Dans le contexte actuel des habitudes et de la mode, il est parfois extrêmement difficile de distinguer le mâle et la femelle et parfois, seulement un gynécologue expérimenté peut le faire.

Le président: M. Deakon.

M. Deakon: Merci. Dr. Walsh pourrait répondre à cette question. Il y a des cas d'anomalies inhérentes parfois, lorsque d'autres enfants dans une famille sont nés malformés et la mère est de nouveau enceinte. A quel moment, déterminez-vous que cet enfant sera aussi anormal.

M. Walsh: Est-ce que vous parlez d'une anomalie psychiatrique ou d'une anomalie en général. Si vous parlez de l'aspect physique, il s'agit d'une question à laquelle Dr Maughan pourrait répondre.

M. Deakon: Répondez d'abord à cette question, ensuite parlez des déformations physiques.

M. Maughan: En ce qui concerne les déformations physiques, on peut parfois prouver par la statistique la génétique mendélienne, ce qui est probablement le cas d'une femme qui a un bébé souffrant d'un kyste fibreux.

[Texte]

can tell what are her chances of having a mongoloid baby; and on excellent statistical evidence you can tell if she is going to have a blind baby, from rubella in the first trimester of her pregnancy.

On the other hand, certain of the inherited congenital abnormalities—Mendelian trait abnormalities—you cannot discover until you examine some of the amniotic fluid which you can get at about 22-24 weeks by natal puncture. Then you can tell exactly whether this baby is going to be a trisomy D, or a trisomy S, and so on—in other words, abnormal.

One thing that bothers gynaecologists very greatly is at what percentage of risk of abnormality to that child should we consider therapeutic abortion. I do not know the answer.

Mr. Deakon: This would also affect the mental health of the mother, I assume? Knowing that other children in her family are deformed and realizing that this new child might also be deformed, what would be the psychological effects on this woman, Dr. Walsh?

Dr. Walsh: I think that in any parents who have had a severely malformed child the psychological trauma is indeed extremely severe. If you are asking me that as a straight question I would have to say that the psychological trauma can be very great. Indeed, psychiatrists often deal with people who have severe depressions, or reactive depressions, following the birth of a malformed, or mentally deficient, child. I think I would have to say that the answer to that question is that they do suffer psychological trauma.

Mr. Deakon: Thank you.

Mr. Valade: I have a supplementary question. Medical science can, in certain cases, foresee an abnormal child being born. When I say "abnormal", it could be psychological or physical, but I am more concerned about the physical aspect. As medical science is progressing, the doctor at some point can see that even if that child is born it will be possible for him to have a normal life. Would that be the conclusion that a doctor would come to before deciding to abort on that ground?

Dr. Maughan: I think perhaps the understanding of congenital anomaly is not clear. We are talking about congenital anomalies

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that are incompatible with any sort of productive life. We are not talking about cleft

[Interprétation]

On peut par exemple supputer les chances qu'aura la femme d'avoir un bébé mongolien. Selon les statistiques excellentes, on peut même dire si elle aura un bébé aveugle à cause d'une rubéole au cours des 3 premiers mois de sa grossesse. D'autre part, il y a, par exemple, des traits d'anomalies congénitales que l'on a hérités, des anomalies mendéliennes que l'on ne peut découvrir avant d'examiner le liquide amniotique qui se forme entre la 22^e et la 24^e semaine par ponction natale. Par cette analyse, on peut déterminer s'il s'agit de trisomie D ou de trisomie S, etc., c'est-à-dire d'un enfant anormal. Les gynécologues se demandent quel est le pourcentage d'anomalies pour envisager un avortement thérapeutique, mais je ne saurais vous répondre.

M. Deakon: Cela touche ici à la santé mentale de la mère si elle sait que ses autres enfants étaient déformés et elle se rend compte que ce nouveau-né sera aussi déformé. En ce moment, quels seront les effets psychologiques, docteur Walsh?

M. Walsh: Je pense que tous les parents qui ont eu des enfants ayant de grosses déformations souffrent de traumatisme psychique très grave. Si vous posez la question très simplement, je pourrais dire que le traumatisme aussi peut être considérable; il arrive même assez souvent que les psychiatres traitent avec des gens qui ont des dépressions sérieuses et réactionnelles à la suite de la naissance d'un enfant difforme ou mentalement malade. Je pense qu'il faudrait répondre à cette question qu'ils souffrent de traumatisme psychologique.

M. Deakon: Merci.

M. Valade: J'ai une question supplémentaire. Même si la science médicale peut, dans certains cas, prévoir la naissance d'un enfant anormal, anormal du point de vue psychique ou du point de vue physique, c'est l'aspect physique qui m'intéresse le plus. Dans la mesure que la science médicale avance, n'est-il pas possible de penser que même si l'enfant est né on puisse en arriver un jour à ce que le médecin puisse assurer à l'enfant une vie normale? Est-ce que ce ne sera pas la considération que le médecin a à l'esprit en provoquant l'avortement?

M. Maughan: Je pense qu'on n'a pas bien défini l'anomalie congénitale. Nous parlons ici d'anomalies congénitales qui pourraient par exemple être incompatibles avec une vie normale. Nous ne parlons pas d'anomalies, palais

[Text]

palates, or twisted ears, and so on. We are talking about congenital anomalies incompatible with any sort of productive life, or anything beyond vegetation life.

Mr. Valade: Yes, this is true; but then it could not be a human being. It would not be a well-formed baby. It might not be a human being at all. It might be just biological living matter, in medical terms.

Dr. Maughan: You can sometimes almost come to that conclusion.

Mr. Valade: This bill deals in part with that question but does not specify that extreme condition. In the present bill any sort of deformity can be invoked as a pretext. Would that not be the case, under the legislation, if you have read it?

Dr. Maughan: I do not think that the legislation does spell out "deformity".

Mr. Valade: No, it does not spell it out.

Dr. Walsh: Nor does it spell out the degree of deformity...

Mr. Valade: Yes; and this is where the danger could...

Dr. Walsh: If you interpret the bill to its full extent it raises the question whether a person who has one deformed leg should be destroyed? Should a person who has two deformed legs? This is the point. At what point do you define that the person is so impaired that they should not live. And of course this also presupposes the question whether they have a right to life.

Mr. Valade: My question was that in the present context this leaves the door open.

An hon. Member: Everyone who has an abortion suffers some noticeable trauma in this regard.

Dr. Walsh: I would have to elaborate. The word "everyone" would be extreme. Let me give you an example. It depends on many factors about the woman. For example, there are certain types of personalities who, because of what is commonly called I suppose psychopathic character structure, lack maternal feeling—in other words they lack the normal maternal capacity to relate to a child. Such a woman may have actually three or four abortions in a row and not experience any guilt. But this is already, to start with, an abnormal personality. This type of case does exist.

[Interpretation]

fendu ou d'une oreille tordue, etc..., nous parlons d'anomalies congénitales avec une vie normale productive, ou toute vie au-delà d'une vie purement végétative.

M. Valade: Sans doute, mais il ne s'agirait pas d'un être humain. Ce ne serait pas un bébé bien formé, il s'agirait d'une espèce de substance vivante biologique, en termes médicaux.

M. Maughan: On peut presque venir à cette conclusion, oui.

M. Valade: Il s'agit ici de traiter en partie cette question, mais on ne parle pas de cette condition de cet état extrême dont vous avez parlé. Dans le bill dont nous sommes saisis, toute difformité pourrait être invoquée comme prétexte. Est-ce que ce ne serait pas le cas si en vertu de la mesure législative en question?

M. Maughan: Je ne pense pas que la loi parle de «difformité».

M. Valade: Non, on ne le prononce pas.

M. Walsh: La loi ne parle pas non plus du degré de difformité.

M. Valade: Il y a donc danger...

M. Walsh: Si l'on pousse les choses à l'extrême, selon le projet de loi, on serait autorisé à mettre à mort quiconque a une jambe déformée, ou bien les deux jambes déformées. Voilà le hic. A quel moment peut-on dire qu'un être humain est si déformé qu'on devrait lui enlever la vie? Bien sûr, c'est soulever en même temps la question du droit à la vie.

M. Valade: Dans le contexte actuel, cela laisse la porte ouverte à un certain nombre d'interprétations.

Une voix: L'avortement stigmatise toujours celles qui ont passé par là.

M. Walsh: Il ne faut pas être trop catégorique à ce sujet. Chez la femme, nombre de facteurs peuvent jouer. Par exemple, il y a ce qu'on appelle des psychopathes, chez qui il y a absence complète d'instinct maternel, des gens qui ne peuvent éprouver aucun sentiment envers un enfant. Ces femmes peuvent se faire avorter trois ou quatre fois sans aucun remords. Il s'agit là, bien sûr, de cas anormaux, mais se présentent dans la réalité.

[Texte]

If you took 100 of such women, examined them and found that they did not have any guilt reactions or any unusual reactions to this, it would give you a completely wrong picture because we are talking about legislation which is going to affect millions of presumably healthy women.

If we talk about a healthy woman who has normal maternal feelings and a normal wish to have a baby our experience, which as I say we cannot prove under the microscope but we are convinced by our observations, is that any woman irrespective of her background who has normal maternal feelings and a normal mature relationship to her femininity does suffer a psychic trauma as the result of an abortion—even if consciously she rejects this.

Mr. Hogarth: Are you aware of any studies that have been done in that field on the resultant trauma to women that have had abortions, therapeutic or otherwise?

Dr. Walsh: I can quote here, if I may, Professor Mueller who is a Professor of Obstetrics and Gynecology at the University of Berne. He says: In our experience neuroses are very common after induced abortions. They have their origin in the fact that although the conscious motivation to the abortion may be well recognized, the unconscious has also been affected and involved.

Mr. Hogarth: I just want to suggest to you that there is contrary opinion. Is that not so?

Dr. Walsh: Yes, there is.

Mr. Hogarth: I would like to read to you from a brief that was submitted by the Unitarian Church of Vancouver to the previ-

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ous House Committee. It was on the psychological and physical after effects of induced abortion. It said:

A good source of opinion and surveys is found in the book *Pregnancy, Birth and Abortion* put out by the Institute for Sex Research at Indiana University. They report on their own sample of some 7,000 women, among whom they recorded 1,609 pregnancies for the white females, 531 of which ended in illegal abortion and 51 of which ended in therapeutic termination. They report less than 10 per cent showed or admitted psychological ill effects after the abortion although a few of these showed severe reactions.

An extensive Swedish study done by psychiatrist Martin Ekblad in 1955 as a follow-up to therapeutic abortion showed an incidence of 14% of women experienc-

[Interprétation]

Néanmoins, peu importe qu'il y ait cent femmes chez qui l'avortement ne suscite aucun remords ou réaction inusitée, ne s'arrêter qu'à celles-ci donnerait une idée tout à fait inexacte de la situation, car nous discutons d'une mesure qui touchera des millions de femmes censément normales.

Dans le cas des femmes en bonne santé, douées d'instinct maternel, qui veulent avoir des enfants, nous avons pu constater, sans pouvoir le prouver scientifiquement, mais d'après nos observations, que l'avortement est cause de traumatismes psychiques chez toute femme normale, maternelle et féminine, quelle que soit sa condition sociale, même si elle les refoule consciemment.

M. Hogarth: Est-ce que certaines études ont été faites sur les séquelles de l'avortement, thérapeutique ou autre?

M. Walsh: Permettez-moi de citer ici le professeur Mueller, professeur d'obstétrique et de gynécologie à l'université de Berne. Il déclare que les névroses sont très fréquentes après un avortement, car, même si les motivations conscientes de l'avortement sont bien admises, l'inconscient est aussi touché et mis en cause.

M. Hogarth: D'aucuns professent l'opinion contraire, n'est-ce pas?

M. Walsh: Oui, certainement.

M. Hogarth: A ce sujet, voici un mémoire soumis au comité qui nous a précédés par l'Église unitarienne de Vancouver. Ce mémoire

portait sur les séquelles psychologiques et physiques de l'avortement provoqué. En voici un passage, et je cite:

Pregnancy, Birth and Abortion, ouvrage publié par l'*Institute of Sex Research*, de l'Université de l'Indiana, renferme beaucoup d'opinions et d'études pertinentes. Le sondage de l'université même portait sur 7,000 femmes; sur 1,609 grossesses chez des blanches, 531 se sont terminées par un avortement illégal et 51 par un avortement thérapeutique. Or, moins de 10 p. 100 des cas d'avortement ont manifesté ou admis des séquelles psychologiques fâcheuses, bien que dans quelques cas, elles furent assez graves.

Une étude serrée, faite en Suède par le psychiatre Martin Ekblad en 1955, fait voir que 14 p. 100 des femmes qui s'étaient fait avorter en éprouvaient un

[Text]

ing mild self-reproach and 11% with severe self-reproach, though the depression even in the latter cases from a psychiatric viewpoint was designated as mild. In 1% of the cases later working capacity was impaired, but these women had manifested severe neurotic symptoms even before the operation.

I will end the quote there. So there is definite opinion contrary to what you have just expressed.

Dr. Walsh: Yes, I am familiar with this study and I have reference to it here. But I would like to make two comments on Dr. Ekblad's findings. The total number of depressive reactions he found was, as you said, 14 per cent mild and 11 per cent severe. That is 25 per cent, one out of every four women, which is an extremely high figure. If you are going to have one out of every four women who has an abortion depressed you are going to have to increase the psychiatric facilities in Canada to an extraordinary degree.

Also, the interviews conducted by Dr. Ekblad from my observations take no account whatever of modern psycho-dynamics. If you interview a woman who has had an abortion which somehow solved a very crucial and critical problem for her, her first experience is one of relief—"Gosh, I am free". If you ask her a week or two weeks later how she feels, she will say, "It is great, it is fine that I had this abortion."

However, if you study the effects on this woman's feeling about herself, about her over-all personal feeling, I suppose you would have to call it happiness or something like this, with not just conscious mechanisms—you see, if you say to someone, "How do you feel?" and they say, "I feel fine." this is not enough because, deep down, they may be feeling terrible or they may have very deep guilt feelings.

Dr. Ekblad's study and most of the other studies on the effects of abortion have dealt with purely conscious interviewing mechanisms. They have taken no account whatever of the long-term effects of unconscious mechanisms on our lives.

I can give you one further example that I have seen in practice. Perhaps Dr. Maughan could support me on this because he may have had a similar experience. I have observed in the last five years, because I am interested in this subject, that in the case of many women who in the climateric or change of life develop depressions sometimes after hysterecto-

[Interpretation]

léger remords et que 11 p. 100 se le reprochaient amèrement, mais que la dépression qui s'ensuivit, même dans ces derniers cas, pouvait être qualifiée de faible au point de vue psychiatrique. Dans 1 p. 100 des cas, leur capacité de travailler a été ultérieurement mise en cause, mais ces femmes avaient déjà manifesté certains symptômes de névrose avant l'avortement.

Fin de la citation. Il est donc sûr que certaines gens n'ont pas la même opinion que vous.

M. Walsh: Je connais l'étude; en fait, il en est question dans les documents que j'ai ici. J'aimerais faire deux remarques au sujet des constatations du professeur Ekblad. D'abord, le nombre total de réactions dépressives, qu'il a relevées, soit 14 p. 100 faibles et 11 p. 100 sévères, s'établit à 25 p. 100 tout de même, une sur quatre, soit une proportion extrêmement élevée. Si une femme sur quatre qui se fait avorter est atteinte de dépression, il nous faudra multiplier les cliniques psychiatriques au Canada.

De plus, les interviews du D^r Ekblad, à mon avis, ne tiennent pas du tout compte des données de la psychodynamique moderne. Si vous interviewez une femme qui s'est fait avorter, qui a ainsi résolu un problème très grave pour elle, son premier sentiment en est un de soulagement. Elle se dit: «Ah, je suis libre.» Si vous lui demandez une semaine ou deux plus tard: «Comment allez-vous?» elle vous répondra: «Oh! c'est merveilleux! Je suis enchantée qu'on m'ait fait avorter.»

Mais si vous en étudiez les effets sur l'idée qu'elle se fait d'elle-même, sur ses sentiments personnels, sur son bonheur, pourrait-on dire, il ne faut pas oublier ce mécanisme conscient qui nous fait répondre, à quelqu'un qui nous demande: Comment allez-vous?: Je vais bien. Cela ne suffit pas; dans son fort intérieure, une femme peut être malheureuse ou éprouver un sentiment de culpabilité très grave.

L'étude du D^r Ekblad, de même que la plupart des autres études sur les séquelles de l'avortement, ne se sont arrêtées qu'aux réflexes d'entrevue absolument conscients. Elles ne tiennent pas du tout compte de l'effet à long terme des réflexes inconscients sur l'existence humaine. Je peux vous évoquer un autre argument, tiré de mes observations personnelles, que le D^r Maughan pourra peut-être confirmer, s'il a dû traiter des cas analogues. J'ai constaté ces cinq dernières années, car la question m'intéresse, qu'un grand nombre de femmes, à l'époque de la ménopause, deviennent déprimées, après une hystérecto-

[Texte]

mies that one of the contents of their depression is guilt about abortions which have been performed earlier in life.

For example, a woman of 30 years who has had an abortion may have no conscious guilt feelings at that time, but during the change of life, or should she develop a depression subsequently, very often one of the things she feels terribly self-accusatory about is the fact that she destroyed a life. This I have found, and other psychiatrists have found this too. So this is a very important aspect of the psychological effects of abortions that have not been given sufficient attention.

Mr. Hogarth: Just one more question sir—and I am indebted for your observations. Is it not so that on occasion there are just as many, if not more, psychiatric problems arising out of the birth of the child?

Dr. Walsh: Yes, indeed. It may impose tremendous strains on her health, it may impose tremendous economic and other strains, and in the case of the unmarried mother, which we must always keep in mind, it imposes the tremendous problem of giving up her baby.

One of the problems that is not properly investigated yet is the following. In respect of a woman who has an abortion—I referred to this a little earlier and I suppose I must repeat myself—our experience is that a woman can tolerate giving up her baby much better than feeling that she has deprived it of its right to life.

This is something that is very deep in a woman's make-up. It is psycho-biological. We

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cannot prove it to anyone statistically. It is an intuitive observation. It is something that doctors who work with patients find all the time.

Mr. Hogarth: Might I suggest that each individual woman would have to be dealt with on the basis of her own psychological situation.

Dr. Walsh: Yes.

Mr. Hogarth: You could not make general rules either way in connection with these matter, could you?

Dr. Walsh: There are many psychiatrists and I believe many people who are not psychiatrists, and there are many women—because I have talked to many about this problem—who feel instinctively, particularly during an episode of German measles, that they want to get rid of their child. Many

[Interprétation]

mie, par exemple, en particulier à cause du sentiment de culpabilité qu'elles éprouvent à l'égard d'avortements antérieurs.

Ainsi, une femme qui s'est faite avorter à 30 ans n'aura peut-être pas eu de remords à ce moment-là, mais à la ménopause ou plus tard, si elle a une dépression, l'une des choses dont bien souvent elle s'accuse, c'est d'avoir détruit une vie. C'est une constatation que j'ai faite et que d'autres psychiatres ont faite aussi. Voilà un aspect très important des effets psychologiques de l'avortement auquel on n'a pas suffisamment songé.

M. Hogarth: Une dernière question. Je vous suis reconnaissant de m'avoir donné le fruit de vos observations. La naissance de l'enfant suscite des problèmes psychiatriques aussi nombreux, sinon plus, n'est-ce pas, que s'il y avait eu avortement?

M. Walsh: Certainement. La santé de la mère peut être gravement mise en péril, il peut se poser, en conséquence, de très graves problèmes d'ordre économique ou autre, et dans le cas de la fille-mère, qu'il ne faut pas oublier, le renoncement du bébé ne se fait jamais sans heurts.

Mais un problème qu'on n'a pas suffisamment étudié, c'est le suivant: chez les femmes qui se sont fait avorter—je me répète, je suppose, mais c'est inévitable—nous avons constaté qu'elles supporteraient mieux d'avoir renoncé à leur enfant que de lui avoir enlevé le droit de vivre.

C'est quelque chose de psychobiologique qui fait partie intégrante de la nature féminine. Nous ne pouvons pas le prouver statistiquement; c'est une observation intuitive. Les médecins qui traitent pareils cas s'en rendent compte continuellement.

M. Hogarth: Chaque femme, donc, est un cas d'espèce psychologique, n'est-ce pas?

M. Walsh: Oui.

M. Hogarth: On ne peut pas édicter de règle générale, pour l'un ou l'autre cas, n'est-ce pas?

M. Walsh: Beaucoup de psychiatres et, selon moi, bien des gens qui ne sont pas psychiatres, de même que beaucoup de femmes, car j'en ai causé avec beaucoup de personnes, connaissent cette poussée instinctive qui agit, par exemple, lors d'une épidémie de rougeole, de sorte que des femmes enceintes

[Text]

women will come and say, "I want to get rid of this child." and everyone being human, you feel that they should. But yet they cannot tolerate the idea of destroying what they feel is alive within them. When they do they suffer for it—whether for a short time or a long time, they do suffer.

One of the problems I see is that many may be led to feel that an abortion is like having a tooth out, and it is not. Psychologically it is an extremely complex and an extremely far-reaching event for any woman in my experience.

Mr. Hogarth: Thank you, sir.

Mr. Valade: May I ask a supplementary?

The Chairman: No, Mr. McQuaid, please.

Mr. Valade: My supplementary is just to clarify one thing because we are asking questions of Dr. Walsh. I would like to ask him, from his experience, how many of those unmarried or married women have asked him for abortion or counsel in abortion because of the influence of their entourage? Perhaps my question would be clearer this way: If she were alone to decide would she ask you for an abortion, or do other factors such as relatives, mothers or friends influence her in taking that decision? In your opinion and experience, how much is this a factor in the decision?

Mr. Walsh: I would be very grateful for the opportunity to give a very brief account of what we do at present at St. Marys' Hospital in Montreal. If a young woman comes to us—and here again I am speaking mainly of unmarried mothers—and says she would like to have an abortion, we tell her from the very beginning that we do not recommend abortions at our particular hospital but we do say to her we are prepared to give you every help.

For example, to answer your question directly, very often these girls come rejected by their families—the great disgrace of being pregnant outside marriage—so the parents naturally in many instances would like her to have an abortion. We say to her: Look, we will arrange a foster home for you, we will give you psychological help, obstetrical care, and social help throughout the period of your pregnancy.

We will also help you to decide whether you wish to give up the baby for adoption or

[Interpretation]

viennent vous dire: «Je veux me débarrasser de cet enfant.» Dans votre for intérieur, vous leur donnez raison. Elles viennent vous voir en disant: «Je veux me débarrasser de cet enfant.» Elles ne peuvent tolérer l'idée de détruire cette vie qu'elles sentent en elles. Lorsque cette idée les torture, que ce soit ou non pendant longtemps, elles en souffrent vraiment.

L'un des problèmes est que beaucoup de personnes seront portées à croire que l'avortement est un peu comme l'extraction d'une dent. Ce ne l'est pas. Psychologiquement, c'est un événement très complexe et qui influe énormément sur la vie d'une femme, d'après mon expérience.

M. Hogarth: Merci beaucoup, monsieur.

M. Valade: Puis-je poser une question supplémentaire?

Le président: Non. Monsieur McQuaid, s'il vous plaît.

M. Valade: Je ne veux que tirer une question au clair, parce que nous posons ici des questions au Docteur Walsh. Je voudrais lui demander si, d'après son expérience, il peut nous dire combien de filles ou de femmes mariées lui ont demandé de se faire avorter ou des conseils sur l'avortement à cause de l'influence de leur entourage. Je m'explique: si elle était seule à décider, est-ce qu'elle demanderait de se faire avorter ou est-ce que d'autres éléments n'entrent pas en ligne de compte, parents, mères ou amis, etc...? A votre avis, dans quelle proportion ces éléments influencent-ils la décision?

M. Walsh: Vous me permettrez de vous dire très brièvement ce que nous faisons actuellement à l'hôpital St. Mary's, à Montréal. Si une jeune femme s'adresse à nous—et je parle surtout des filles-mères—et qu'elle veut se faire avorter, nous lui disons dès le départ que nous ne recommandons pas les avortements dans notre hôpital. Mais nous lui disons que nous sommes prêts à l'aider au maximum.

Par exemple, pour répondre directement à votre question, ces personnes viennent parce qu'elles sont rejetées par leurs familles, du fait qu'elles soient devenues enceintes sans être mariées, et dans bien des cas, les parents veulent qu'elles se fassent avorter. Nous leur disons: «Nous allons vous trouver un foyer nourricier, nous allons vous donner de l'aide psychologique, des soins obstétriques et de l'aide sociale au cours de votre grossesse.

Nous allons aussi vous aider à décider si vous voulez donner votre enfant à des fins

[Texte]

not depending on your wishes and your circumstances. If you wish to have this kind of help we will provide it. If you wish to have an abortion we are not able to recommend this for you and you will have to seek elsewhere.

Our experience has been that very often when these girls do come they are under terrific pressure, both from their families and because of the social disgrace, to have an abortion. We have found in those girls who have had abortions that they have felt tremendously guilty and also their sense of their capacity to have a baby has been greatly harmed. On the other hand, the girls who have gone on to have their babies we have found to be in balance.

Here again I cannot prove it. I am just giving you my impressions that it is much more humane to help the girl to have her baby than to help her to have an abortion. Again, this is very controversial and many people might criticize it, but I am in favour of providing help for these girls both financially and medically. Abortion is a simple solution for this girl—too simple in my experience. It is like having a tooth out; it is not like that at all!

The Chairman: Mr. McQuaid?

Mr. McQuaid: I just have one question, Mr. Chairman, and perhaps I could direct it to Dr. Maughan. You practised, Doctor, in one of the largest cities in Canada...

Dr. Maughan: The largest city, sir.

Mr. McQuaid: ...in one of the largest, if not the largest hospital in Canada, and in a province where I understand you to say a few minutes ago that even your medical profession does not recognize therapeutic abortions. Is that right?

Dr. Maughan: There are therapeutic abortions done in the province...

Mr. McQuaid: But they are not legal, are they?

Dr. Maughan: Oh, no.

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Mr. McQuaid: What is your experience with reference to the number of patients who may be referred to the suffering from the effects of the so-called back-door abortions? What I am getting at is, do you have many women and girls referred to your hospital suffering from the effects of back-door abortions? This is one of the arguments that is put

[Interprétation]

d'adoption, suivant les circonstances et vos désirs. Et si vous voulez avoir ce genre d'assistance, nous pouvons vous le donner. Si vous voulez un avortement, nous ne pouvons pas le recommander et vous serez obligée de vous adresser ailleurs.»

Notre expérience a été que, très souvent, lorsque ces filles viennent nous voir, elles subissent une forte pression de la part de leur famille et à cause de la honte sociale à se faire avorter. Nous avons vu que celles qui se sont faites avorter ont eu des complexes de culpabilité très forts et aussi leur sentiment de possibilité d'avoir un enfant est diminuée. D'autre part, celles qui ont décidé d'avoir leur enfant se sont révélées mieux équilibrées.

Je ne peux pas le prouver, c'est simplement une impression que je vous donne. Il semble qu'il est beaucoup plus humain d'aider la fille à avoir son enfant, que de l'aider à se faire avorter. Mais encore une fois, c'est une question très controversée et beaucoup de personnes peuvent la critiquer. Je suis pour l'assistance à ces filles du point de vue financier et médical. L'avortement est une solution simple pour cette fille, beaucoup trop simple, à mon avis. Ce n'est pas du tout comme se faire arracher une dent.

Le président: Monsieur McQuaid.

M. McQuaid: Une question, monsieur le président. Je voudrais la poser au docteur Maughan. Vous exercez dans une des plus grandes villes du Canada.

M. Maughan: La plus grande ville, monsieur!

M. McQuaid: ... donc, dans un des plus grands hôpitaux, et dans une province, d'après ce que j'ai compris, où la profession médicale ne reconnaît pas l'avortement thérapeutique, c'est bien ça?

M. Maughan: Il y en a qui sont faits dans la province...

M. McQuaid: Mais ce n'est pas légal, n'est-ce pas?

M. Maughan: Non.

M. McQuaid: Quelle est votre expérience, docteur, en ce qui concerne le nombre de malades qui vous sont envoyées, souffrant des effets des supposés avortements clandestins? Est-ce qu'il y a beaucoup de femmes et de filles qui sont envoyées à votre hôpital souffrant des effets d'un avortement clandestin? C'est là un des arguments en faveur de la

[Text]

up in favour of legalizing abortions; that we are suffering—some put the figure tremendously high—from the effect of back-door abortions. I am wondering what your experience is in the City of Montreal in that respect.

Dr. Maughan: At our hospital we have an open-door policy. This means that necessarily we have a number of back-door end results and there are a number of girls who come in to us with infections, with hemorrhage, and so on, from the effects of illegal criminal abortions. It is a greater number, certainly, than we would do as therapeutic abortions but the ones that come to us with the after effects of criminal abortions would never have been done as therapeutic abortions, because the women would not qualify under a vastly more liberal law than is envisaged.

Mr. McQuaid: Could you give us a rough estimate of the number of patients in a year that might come to you suffering from the effects of back-door abortions?

Dr. Maughan: Bad ones? It is hard to say; twenty a year maybe.

Mr. McQuaid: Twenty a year?

Dr. Maughan: But this is what I periodically term the cesspool of obstetrics and gynaecology for Montreal, because we get the bad ones; they are dropped on our doorstep.

Mr. McQuaid: Is it your opinion that the legislation we propose to adopt here today would have a very great effect in cutting down the numbers of these so-called back-door abortions?

Dr. Maughan: I would say the Bill as written would have not the slightest effect.

Dr. Walsh: Dr. Lavigne, I would like to call on Dr. Lorrain who has some very valuable information on this point if this is possible.

The Chairman: Just a moment please, Doctor; your name please?

Dr. J. Lorrain (Chief, Gyneco-Obstetrics Sacre-Cœur Hospital, Montreal, P.Q.): My name is Dr. Jacques Lorrain.

The Chairman: What is your evidence to be?

[Interpretation]

légalisation de l'avortement, le fait qu'on souffre des suites des avortements clandestins, et certains citent des chiffres extrêmement élevés. Quelle est votre expérience à Montréal dans ce domaine?

M. Maughan: Nous avons une politique de «porte ouverte» à notre hôpital. Cela veut dire que nous avons donc pas mal de personnes qui viennent à la suite d'un avortement clandestin. Il y a un certain nombre de filles qui viennent nous voir avec des infections, des hémorragies, etc... résultant d'un avortement illégal et criminel. Il y a un nombre certainement beaucoup plus grand que si les avortements avaient été thérapeutiques. Mais celles qui viennent nous voir avec des séquelles d'avortements clandestins, n'auraient certainement pas pu se faire avorter thérapeutiquement parce qu'elles n'en auraient pas eu le droit, même avec une loi beaucoup plus libérale que celle prévue.

M. McQuaid: Est-ce que vous pourriez nous dire à peu près le nombre de malades qui s'adressent à vous, annuellement, souffrant des séquelles de ces avortements clandestins?

M. Maughan: Les cas graves? C'est difficile à dire. Peut-être vingt.

M. McQuaid: Vingt par an?

M. Maughan: Mais cela se produit dans ce que je nomme le puisard de l'obstétrique et de la gynécologie pour Montréal, parce que nous recevons les cas très mauvais qu'on nous laisse à la porte.

M. McQuaid: Pensez-vous que le Bill qu'on doit adopter ici aujourd'hui aurait un gros effet pour limiter le nombre de ces soi-disant avortements clandestins?

M. Maughan: Je dirais que le Bill, tel qu'il est rédigé, n'aurait pas la moindre influence.

M. Walsh: Docteur Lavigne, j'aimerais demander au docteur Lorrain de nous donner des renseignements très intéressants qu'il possède à ce sujet, si c'est possible.

Le président: Un instant, docteur; votre nom, s'il vous plaît?

Dr Jacques Lorrain (Chef du Service gynéco-obstétrique, hôpital du Sacré-Coeur, Montréal): Mon nom est docteur Jacques Lorrain.

Le président: Et vous êtes? ...

[Texte]

Dr. Lorrain: Obstetrics and gynaecology at Sacre-Cœur Hospital.

The Chairman: In order to comply with our ruling I think we will have to have directed questions to the witness. Are there any directed questions to the witness?

Mr. Valade: Yes, Mr. Chairman, the question was put by Mr. McQuaid when he asked Dr. Maughan whether, if this law were implemented, it would diminish or stop the back-door abortionist, and I think Dr. Lorrain submitted graphs this morning to give us some indication. I think it is in order for Dr. Lorrain to inform us.

The Chairman: We are not here to have presentations from the Doctor. We are here to have the Doctor answer questions directed from members of the Committee. If Mr. McQuaid wishes to direct a question to the Doctor it will be in order.

Mr. McQuaid: Mr. Chairman, I am a bit concerned about this because I realize that one of the strongest arguments being advanced in favour of legalized abortions is the fact that it will cut down the so-called back-door abortions.

Various figures have been submitted to us on the number of back-door abortions performed in Canada throughout the year and I thought if we could get some idea of what takes place in our largest city in Canada it might be helpful. I am particularly interested in knowing, Doctor, in your opinion and from your experience, whether you think the legislation we propose to pass would have the effect of substantially and materially decreasing the number of back-door abortions that are being performed today.

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Dr. Lorrain: I only can agree very strongly with Dr. Maughan's statement that it would not have any effect at all. We can look at what happened in cities and in countries where the same law was passed many years ago to see what happened to the number of illegal abortions. If we refer to published statistics we see that there is no decrease at all.

Not even that, but if you look at the graphic that you have on the table, you will see Graphic No. 1(A) referring to legal abortions, so we know already that the illegal abortions will not decrease, but we know that the legal abortions will increase. This is Graph 1 (A) for Sweden, Denmark and Finland.

[Interprétation]

M. Lorrain: Je suis gynécologue obstétricien à l'hôpital Sacré-Cœur.

Le président: Afin d'observer notre règle, il faut que des questions directes soient posées au témoin. Est-ce qu'il y a des questions directes?

M. Valade: Oui, monsieur le président. C'est M. McQuaid qui a posé la question au docteur Maughan: si cette Loi était en vigueur, est-ce que cela diminuerait ou ferait cesser les avortements clandestins? Je crois que le docteur Lorrain a présenté des graphiques ce matin pour nous donner quelques clarifications à ce sujet. Je crois qu'il est dans les règles que le D^r Lorrain nous renseigne.

Le président: Nous ne sommes pas ici pour recevoir des présentations du docteur. Nous sommes ici pour que les membres du Comité posent des questions et que le docteur y réponde. Si monsieur McQuaid veut poser une question au docteur, ce sera dans les règles.

M. McQuaid: Monsieur le président, je suis quelque peu inquiet de cela parce que je me rends compte que l'un des arguments les plus importants avancés en faveur des avortements légalisés est le fait qu'ils diminueront les soi-disants avortements clandestins.

On nous a présenté divers chiffres sur le nombre d'avortements clandestins faits au Canada durant l'année, et je pense que si nous pouvons avoir une idée de ce qui se passe dans nos plus grandes villes au Canada, cela pourrait être utile. Je suis surtout intéressé à savoir, Docteur, si, à votre avis et d'après votre expérience, la mesure législative que nous nous proposons d'adopter aura pour effet de diminuer considérablement et matériellement le nombre d'avortements clandestins qui se font de nos jours.

M. Lorrain: Je ne puis qu'appuyer fortement la déclaration du docteur Maughan, portant qu'elle n'aura aucun effet. Nous pouvons examiner ce qui s'est produit dans les villes et pays où la même loi a été adoptée, il y a plusieurs années, pour voir comment le nombre d'avortements illégaux en a été affecté. Si nous nous reportons aux statistiques publiées, nous constatons qu'il n'y a aucune diminution.

Non seulement cela, mais si vous consultez le graphique qui est sur la table, vous constaterez que le graphique n° 1(A), qui a trait aux avortements illégaux, nous révèle tout de suite que ces derniers ne diminueront pas, mais il nous révèle également que les avortements légaux augmenteront. C'est le graphique n° 1(A) pour la Suède, le Danemark et la Finlande.

[Text]

The Chairman: Perhaps, Doctor, you could identify the graph that you are referring to. What is it, Doctor?

Dr. Lorrain: The graph shows the legal abortions done in Sweden, Denmark and Finland. Graph I (A) shows the total number of legal abortions and graph I (B) refers to the number of deliveries per year.

Now if we go into the Eastern European countries where the law has been very liberalized on abortions, what happens? Now we move to graph II and note that the number of illegal abortions has been stable. This has been advanced because we know that a certain percentage of people who have induced abortions have to go to hospital to complete their abortions. So we see that the number of hospital admissions for incomplete abortions—that is the bottom line—did not show any change. We can see that the legal abortions, naturally, did increase greatly. Then there is the other line which shows the total number of deliveries per year.

Now if we move to another country where the law on abortions has been greatly liberalized for some time—and I am speaking about Japan—you will note from the next graph that there is a tremendous increase in the number of abortions compared with what we call a slight decrease in the graphic. But if we examine this very deeply we know the reason that it seems to decrease, although it does not.

It is because in Japan there are laws telling that you should report the abortion to the government to which you have to pay taxes. We know that because of that this cannot be true. And if we could see what happens in the Province of Quebec then we could say that these statistics could be similarly applied to Canada. We see the number of abortions based on hospital admissions. This information has been given by the Quebec government. We know that the number of abortions is decreasing.

So my conclusion would be the problem of abortion is less a problem now than it was before. So why hurry to try to pass a law that might have something wrong with it in the future? I am referring especially to books. If you have the time, and I know that you are very busy, I would like you to read this book entitled "The Terrible..."

The Chappell: Mr. Chairman, may I object again, please.

[Interpretation]

Le président: Peut-être, Docteur, pourriez-vous identifier le graphique que vous mentionnez. Quel est-il, Docteur?

M. Lorrain: Le graphique représente les avortements légaux faits en Finlande, en Suède et au Danemark. Le tableau 1(A) représente le nombre total d'avortements légaux, et le tableau 1(B) le nombre d'accouchements par an.

Si nous allons dans les pays de l'Europe de l'Est, où la loi a été libéralisée quant à l'avortement, que se passe-t-il? Alors, là, nous regardons le tableau II; nous y voyons que le nombre des avortements illégaux est resté stable; mais nous savons qu'un certain pourcentage de personnes qui ont provoqué des avortements doivent aller à l'hôpital pour terminer l'opération. Donc, nous voyons que le nombre d'admissions à l'hôpital pour les avortements incomplets—c'est-à-dire la ligne inférieure—n'indique aucun changement. Nous voyons que les avortements légaux ont augmenté de beaucoup. Ensuite, vous avez la ligne qui indique le nombre total d'accouchements par an.

Si nous passons à un autre pays où on a libéralisé la loi sur l'avortement, depuis un certain temps—je parle du Japon—vous verrez, d'après le tableau suivant, qu'il y a une très grande augmentation du nombre des avortements, comparativement à une petite diminution sur le graphique. Mais si nous examinons cela de près, nous savons pourquoi cela semble décroître, bien qu'il n'en soit pas ainsi.

Au Japon, il y a une loi qui dit que vous devez faire rapport de tous les avortements au gouvernement, à qui il faut payer une taxe. Nous savons qu'à cause de cela, ceci n'est pas le tableau véritable. Si nous pouvions constater ce qui se passe au Québec, ces statistiques pourraient s'appliquer au Canada dans son ensemble. Nous voyons le nombre d'avortements, fondé sur le nombre d'admissions à l'hôpital. Ces renseignements m'ont été donnés par le gouvernement du Québec. Nous savons que le nombre d'avortements décroît.

Ma conclusion, par conséquent, c'est que le problème de l'avortement est moins un problème aujourd'hui que par le passé. Donc, pourquoi se presser d'adopter une loi qui se révélerait peut-être une mauvaise loi plus tard? Je me réfère tout particulièrement à un livre. J'aimerais, si vous en avez le temps, et je sais que vous êtes très occupés, que vous lisiez ce livre, intitulé "The Terrible..."

M. Chappell: Monsieur le président, je proteste encore une fois.

[Texte]

The Chairman: Yes, Mr. Chappell.

Mr. Chappell: Some of us wish to question some of these doctors. I have been waiting for a long while to put some questions to Dr. Maughan. This is indeed a very, very, very long answer to one question. It sounds, to me at least, more like a prepared argument than an answer to a question.

The Chairman: I think your point is well taken, Mr. Chappell. The question was directed by Mr. McQuaid and the real meat of it was the number of clandestine abortions. I think you have given a fairly comprehensive answer in that regard and I would ask you to restrict your answer just to that particular topic.

Mr. Chappell: May I place some questions to Dr. Maughan, please.

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Dr. Maughan, I understood you to say that the new law would not cause a decrease in black market abortions.

Dr. Maughan: That is right.

Mr. Chappell: I infer from that that you feel that after the new law is passed none of these people will avail themselves of the legal channels?

Dr. Maughan: No, that is not true. They may avail themselves of the legal channels but there will not be indication that would allow them in the view of a medical committee to be considered for therapeutic abortion.

Mr. Chappell: Well do you anticipate that some of them will seek to have their abortions through legal channels rather than the black market?

Dr. Maughan: Many.

Mr. Chappell: Many will. Well is it not possible then there may be a decrease in the illegal ones through many taking advantage of the fact that they may have abortions in hospitals.

Dr. Maughan: I think you misunderstood my first answer. They would not pass the abortion's committee of a hospital because they would not have danger to their life or health, and there would not even be the question of a high probability of a malformed child. The people who are seeking these illegal abortions are perfectly healthy people.

Mr. Cantin: If I may have a supplementary, are you of the opinion that members of the medical committee will not be responsible people?

[Interprétation]

Le président: Oui, monsieur Chappell?

M. Chappell: Certains d'entre nous aimeraient poser des questions à ces médecins. J'attends depuis un moment pour poser des questions au Dr Maughan. C'est là une réponse bien longue à une question. Cela me paraît plutôt une déclaration bien préparée.

Le président: Vous avez raison, monsieur Chappell. La question a été posée par M. McQuaid et portait sur le nombre d'avortements clandestins. Je crois que vous avez donné une réponse très complète à ce sujet et j'aimerais vous demander de vous limiter à ce sujet.

M. Chappell: J'aimerais poser des questions au Dr Maughan.

Docteur Maughan, j'ai cru comprendre que la nouvelle loi ne causerait pas une diminution des avortements clandestins.

M. Maughan: En effet.

M. Chappell: Donc, vous pensez qu'après l'adoption de la nouvelle loi, aucune de ces personnes ne fera appel aux moyens légaux?

M. Maughan: Non, ce n'est pas vrai. Ils feront peut-être appel à ces moyens légaux, mais il n'y aura pas d'indications qui permettront, du point de vue du comité médical, de considérer ces avortements comme des avortements thérapeutiques.

M. Chappell: Pensez-vous que certains d'entre eux essayeront d'avoir leur avortement par les voies légales, plutôt que par les voies illégales?

M. Maughan: Beaucoup.

M. Chappell: Beaucoup. Est-ce qu'il n'y aura pas alors une diminution des avortements illégaux, étant donné qu'on pourra se faire avorter dans les hôpitaux?

M. Maughan: Je crois que vous n'avez pas compris ma première réponse. Ces personnes n'auraient pas l'approbation du comité de l'avortement de l'hôpital, parce que leur vie, ou leur santé, ne serait pas en danger, et qu'il ne serait même pas probable que l'enfant soit malformé. Les gens qui veulent ces avortements légaux sont en pleine santé.

M. Cantin: Puis-je poser une question supplémentaire? Etes-vous d'avis que les membres du comité médical ne seront pas des personnes responsables?

[Text]

Dr. Maughan: Certainly not. Hopefully they are. I would like to bring out possibly as an answer to this question that I would hope they will be the most responsible people in medicine, that you will have the grace to designate certain centres in the country where these things may be done because they are hazardous procedures and you, hopefully, will have the very best experts available to counsel whether they should or should not be done.

Mr. Chappell: Dr. Maughan, I am somewhat amazed at your answer. You say these black market abortions would not decrease because they would not pass the board.

Dr. Maughan: As your law is written, Mr. Chappell, they would not constitute danger to the life or health of the mother.

Mr. Chappell: Is that a medical answer or a philosophical one? I am wondering in a sense how you can give that medical answer, not having seen them.

Dr. Maughan: Because we do see very, very many people who had had criminal abortions. I do not mean as a post-abortion thing, I mean in the course of gynaecologic practice in later years—and they are perfectly healthy women.

Mr. Chappell: Yes, but is it not a rather amazing statement, supposing there are 2,000 black market abortions a year, that you, a doctor, can say not one of those would pass without seeing one of them.

Dr. Maughan: Very, very few.

Mr. Chappell: Very few.

Dr. Maughan: Very, very few.

Mr. Chappell: There are a few general questions I would like to ask you. Abortions are taking place now in Quebec hospitals. In each case is there a hospital committee?

Dr. Maughan: Yes.

Mr. Chappell: And I take it they are set up by the sole guidance of the hospital authorities, so they could vary from hospital to hospital.

Dr. Maughan: Yes.

Mr. Chappell: And from your knowledge of the literature would you agree with me that in practically all university hospitals there is a committee and that they are performing abortions.

[Interpretation]

M. Maughan: Certainement pas. J'espère que ce sont les personnes les plus responsables dans le domaine médical. On va désigner certains centres dans le pays, où ces choses seront faites, car ce sont des opérations dangereuses, et probablement, vous aurez les meilleurs experts à votre disposition, nous l'espérons.

M. Chappell: Docteur Maughan, je suis quelque peu surpris par votre réponse. Vous dites que ces avortements clandestins ne vont pas diminuer, parce qu'ils n'obtiendront pas l'approbation du conseil?

M. Maughan: Selon la loi, monsieur Chappell, cela ne mettrait pas en danger la vie ou la santé de la mère.

M. Chappell: Est-ce que c'est une réponse médicale, ou une réponse philosophique? Comment pouvez-vous donner cette réponse sans les avoir vus?

M. Maughan: Parce que nous voyons beaucoup de gens qui ont des avortements criminels. Je ne parle pas de ce qui suit l'avortement, je parle de pratiques gynécologiques de ces dernières années, et ce sont des femmes en parfaite santé.

M. Chappell: Oui, mais n'est-ce pas étonnant, de la part d'un médecin, de supposer que sur 2,000 avortements clandestins, par an, aucun d'eux ne serait accepté?

M. Maughan: Très, très peu.

M. Chappell: Très peu?

M. Maughan: Très, très peu.

M. Chappell: Il y a quelques questions générales que j'aimerais vous poser. Il y a des avortements qui se font actuellement dans les hôpitaux du Québec. Y a-t-il un comité dans chaque cas?

M. Maughan: Oui.

M. Chappell: Et ce sont les autorités de l'hôpital qui les établissent; donc, ils peuvent varier d'un hôpital à l'autre?

M. Maughan: Oui.

M. Chappell: D'après vous, est-ce que, dans pratiquement tous les hôpitaux universitaires, il y a un comité, et y pratique-t-on l'avortement?

[Texte]

Dr. Maughan: I think that is true, yes—with a couple of exceptions.

Mr. Chappell: All right. Now you agreed with somebody who was questioning you earlier, I think it was Dr. Ritchie, that if someone came to the hospital in haemorrhage—an emergency, you do not have to wait for the committee.

Dr. Maughan: No.

Mr. Chappell: I take it if someone came to you when you were away from the hospital and it was an emergency, you would not wait for the committee.

Dr. Maughan: I do not quite follow the gist of "...when I was away from the hospital..."

Mr. Chappell: Well suppose you are visiting in some small hospital out in the country some place, you happened to be there on some other case and there was an emergency, you would act right then.

Dr. Maughan: In the event of the woman suffering severe harm from continuing to bleed, in the case of inevitable abortion, certainly.

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Mr. Chappell: You would act without any other doctor advising you, if you had to.

Dr. Maughan: Certainly for the very good reason that in this inevitable abortion the baby is already dead.

Mr. Chappell: Yes, and I take it that you would not condemn any other doctor in Canada for so acting also...

Dr. Maughan: Certainly not.

Mr. Chappell: ...if, in his opinion, it was justified.

Dr. Maughan: Not "any other doctor," almost all other doctors.

Mr. Chappell: Well any doctor who was reasonably qualified.

Dr. Maughan: Any doctor who was qualified, correct.

Mr. Chappell: So if he, in his own honest belief, felt he should, you would not suggest that he should wait for some committee?

Dr. Maughan: Not if the woman's life is in immediate danger.

Mr. Chappell: All right. Are you not concerned that what you are doing at your hospi-

[Interprétation]

M. Maughan: Je crois que oui; sauf une ou deux exceptions.

M. Chappell: Vous étiez d'accord avec quelqu'un qui vous a posé une question tout à l'heure—je crois que c'est le D^r Ritchie—comme quoi si quelqu'un s'adressait à l'hôpital en état d'hémorragie, vous n'avez pas besoin d'attendre la décision du comité.

M. Maughan: Non.

M. Chappell: Je crois comprendre que s'il se présente un cas d'urgence alors que vous n'êtes pas à l'hôpital, vous n'attendez pas la décision du comité.

M. Maughan: Qu'est-ce que vous voulez dire par «je ne suis pas à l'hôpital»?

M. Chappell: Supposons que vous êtes dans un petit hôpital, quelque part à la campagne, et qu'il y a un cas d'urgence, vous êtes obligé d'opérer.

M. Maughan: Si la femme risquait de souffrir très gravement des séquelles de l'hémorragie, en cas d'avortement inévitable, certainement.

M. Chappell: Vous agiriez sans le conseil d'un autre médecin?

M. Maughan: Bien sûr, pour la bonne raison que, dans le cas de cet avortement inévitable, l'enfant est déjà mort.

M. Chappell: Et vous ne condamneriez pas un autre médecin, au Canada, de faire la même chose...

M. Maughan: Certainement pas.

M. Chappell: ...si, à son avis, c'était justifié.

M. Maughan: Pas «un autre médecin», presque tous les autres médecins.

M. Chappell: Un médecin assez compétent.

M. Maughan: Un médecin compétent, bien sûr.

M. Chappell: Donc, s'il croit bien honnêtement qu'il devrait le faire, vous ne suggérez pas qu'il devrait attendre un comité.

M. Maughan: Non, si la vie de la femme est en danger immédiat.

M. Chappell: Bien sûr. Est-ce que vous ne pensez pas que ce que vous faites à votre

[Text]

tal—that is, carrying out some abortions—is perhaps illegal under this state of confusion?

Dr. Maughan: Doing therapeutic abortions?

Mr. Chappell: Yes.

Dr. Maughan: Certainly it is illegal.

Mr. Chappell: Some of the lawyers cannot agree whether it is or it is not. Let us suppose for a moment it is illegal. Are you not concerned that you are breaking the law and might be charged?

Dr. Maughan: Yes, but I feel that my medical conscience and my Hippocratic Oath takes precedence over the law...

Mr. Chappell: I do not quarrel...

Dr. Maughan: ...in the sense that if I am doing this abortion I am doing it to save the woman's life and to safeguard her health.

Mr. Chappell: I accept that completely, as Dr. Bourne did in England.

Dr. Maughan: Yes.

Mr. Chappell: Now, my question is: Do you not think quite a few doctors would feel better if it were written out that it was legal for them to do it and not to have that shadow of guilt hanging over them?

Dr. Maughan: I fully agree with you, and I might add that the gynecologist is the trigger man in this thing. He is the man that commits the murder. It is all right for the psychiatrist or the internist or the cardiologist to say: "Stand up and shoot that guy."

Mr. Chappell: I agree.

Dr. Maughan: When you are the fellow who is pulling the trigger, you are put in a completely different position. This is why I would say almost all gynecologists have a great reluctance to perform therapeutic abortions.

Mr. Chappell: May I put this to you, strictly as a medical man. As the law now stands—and in your opinion it is illegal and we will accept that for the moment—there is some concern that you may be accused of committing a criminal act. Now, here is my question: Do you not think some doctors also might be concerned unless other doctors sort of implied that they were practising close to the line by carrying out abortions?

Dr. Maughan: That other doctors might be concerned?

[Interpretation]

hôpital, c'est-à-dire faire des avortements, ce qui est peut-être illégal dans cette confusion?

M. Maughan: En faisant des avortements thérapeutiques?

M. Chappell: Oui.

M. Maughan: Bien sûr que c'est illégal.

M. Chappell: Certains juristes ne sont pas d'accord. Mais, supposons que c'est illégal. Est-ce que cela ne vous préoccupe pas que vous alliez contre la Loi et que vous pourriez être accusé?

M. Maughan: Oui, mais je pense que ma conscience médicale et mon serment hippocratique prennent le pas sur la Loi...

M. Chappell: Je ne dispute pas...

M. Maughan: Donc, si je fais cet avortement, je le fais pour sauver la vie de la femme, et de maintenir sa santé.

M. Chappell: J'accepte cela, comme le docteur Borne l'a fait en Angleterre.

M. Maughan: Oui.

M. Chappell: Maintenant, pour ma question: Ne pensez-vous pas qu'un certain nombre de médecins se sentiraient mieux si l'on dit que c'est légal, qu'ils n'auraient pas cette ombre de culpabilité qui planerait sur eux?

M. Maughan: Je suis d'accord avec vous et je pourrais ajouter que le gynécologue c'est l'homme important dans cette affaire. C'est lui qui commet le meurtre. C'est très bien pour le cardiologue, le psychiatre, etc. Ils disent: «Bon, allez fusillez ce type».

M. Chappell: D'accord.

M. Maughan: Mais, quand vous êtes celui qui tire sur la gachette, alors vous êtes dans une position tout à fait différente. C'est pour cela que je vous dis que presque tous les gynécologues hésitent beaucoup à faire des avortements thérapeutiques.

M. Chappell: En tant que médecin je vous pose cette question. Telle que la Loi existe, à votre avis, c'est illégal, n'est-ce pas? Nous sommes d'accord là-dessus. Certains se préoccupent que l'on puisse vous accuser de commettre un acte criminel. Ne pensez-vous pas que certains médecins peuvent aussi être préoccupés du fait que d'autres de leur collègues font des choses qui ne sont pas tout à fait légales?

M. Maughan: Que d'autres médecins soient préoccupés?

[Texte]

Mr. Chappell: Yes, for example, not knowing the case, if in some hospital they carried out many more than in your hospital, might you not wonder that perhaps these doctors are practising close to the line?

Dr. Maughan: I would not wonder—I would ask. I sit in the happy position, because of McGill University and our rotation residency training program, of being able . .

Mr. Chappell: Are you the chief gynecologist at the McGill hospital?

Dr. Maughan: Yes.

Mr. Chappell: Thank you. I have one more question, and this is really for my own edification. We have all heard of cases where someone wants an abortion because of the pressure on the family unit. You have no doubt heard of such cases. In your hospital, has there been any sterilization of male or female to prevent the future need of abortion?

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Dr. Maughan: Well, there are many, many tubal ligations which are done, of course, to prevent abortion and these again all with medical indication, because another pregnancy would endanger the health and life of the mother. These tubal ligations are done. For example, almost always we do a tubal ligation after the third or fourth Caesarian, because entering that abdomen too often is going to endanger the life and health of the mother.

Mr. Chappell: So you do some on females?

Dr. Maughan: Well, we do not practice with the males.

Mr. Hogarth: That is in another section of the bill, Mr. Chairman.

Mr. Chappell: The reason I ask is that we all received a letter from a professor from the University of Saskatchewan who is in charge of a committee there, and he points out how it is done on females, but it is really a much more simple procedure for the husband.

Dr. Maughan: It is a much more simple procedure in the male with much different after effects.

Mr. Chappell: But in any event, in your hospital you have done some on females but you have no knowledge of whether they have brought in the husband and sterilized him.

[Interprétation]

M. Chappell: Oui, par exemple, ne connaissant pas le cas, s'il y a des hôpitaux où il y a plus d'avortements que dans le vôtre, est-ce que vous ne seriez pas inquiets de savoir qu'il y a des médecins qui travaillent à la limite, si l'on veut, de la loi?

M. Maughan: Je ne me demanderais pas, je leur demanderais. Ma position est bonne, à cause de l'Université McGill et de notre programme alternatif de formation en résidence, et je peux . .

M. Chappell: Est-ce que vous êtes le gynécologue en chef à l'hôpital de McGill?

M. Maughan: Oui.

M. Chappell: Merci, une autre question, c'est pour ma propre connaissance. Nous avons tous entendu parlé de cas où une personne veut un avortement, à cause de la pression que cela ferait sur l'unité familiale. Vous avez sans doute entendu parler de pareils cas. Ma question est la suivante. Dans votre hôpital, est-ce qu'il y a eu stérilisation de femmes ou d'hommes pour empêcher la nécessité future d'un avortement?

M. Maughan: Il y a beaucoup de ligatures tubaires qui se font pour éviter d'avoir recours à l'avortement éventuellement et toujours avec des indications médicales, parce qu'une autre grossesse mettrait en danger la vie de la mère. Et cette ligature des trompes se fait dans ces circonstances. Nous faisons en général cela après la troisième ou la quatrième césarienne, parce que d'opérer l'abdomen trop de fois peut mettre en danger la vie de la mère.

M. Chappell: Vous faites cela sur les femmes?

M. Maughan: Ah, nous ne pratiquons pas cela sur les hommes.

M. Hogarth: Monsieur le président, c'est un autre article du bill.

M. Chappell: Nous avons tous reçu une lettre d'un professeur de l'Université de Saskatchewan qui est en charge d'un comité. Et, il a dit que cela se faisait sur les femmes et que c'était beaucoup plus facile de le faire sur le mari.

M. Maughan: Oui, c'est beaucoup plus facile et avec des effets beaucoup plus différents.

M. Chappell: Mais, en tout cas, à votre hôpital, vous avez fait cette opération chez les femmes, mais vous ne savez pas si le mari a été stérilisé?

[Text]

Mr. Maughan: Well, they would not do both.

Mr. Chappell: No, no but instead. I understand from this professor that there is a bit of danger to the mother's life to do her, but very little danger if you do the husband instead.

Dr. Maughan: We have not had a mortality or a morbidity in the last 20-odd years from tubal ligation in the female. It is a simpler operative procedure in the male but, as I indicated earlier, with much greater side effects.

Mr. Chappell: I see.

Dr. Maughan: With the back-flow from the blocked vas deferens you get some atrophy of testicle and therefore if the sustentacular cell in the testicle, that is, the male hormone or testosterone secreting cell...

Mr. Chappell: It does not sound good at all.

Dr. Maughan: ...you are less of a man.

Mr. Hogarth: When the husband and wife are flipping coins at the hospital door, the husband should remember that answer.

I have a supplementary question. The thing that concerns me is that you have admitted that therapeutic abortions in the eyes of the medical profession are illegal but justified so far as the doctor is concerned by virtue of the fact that they are saving human life. The illegality of that is, to a large extent, indicated by the hospital records. Is that not so? They are never written up as abortion, are they?

Dr. Maughan: Yes.

Mr. Hogarth: I thought that in a great number of instances they are called D and C's.

Dr. Maughan: Our therapeutic abortions are listed as therapeutic abortions.

Mr. Hogarth: You have knowledge, though, that in many hospitals they are written up as diagnostic and curettage examinations.

Dr. Maughan: I do not think so. There is always the record that it is a therapeutic abortion. In that same record there will be all of the signed consultative recommendations, each and every one of them, and there will be at least four so signed in every record of a

[Interpretation]

M. Maughan: On ne le fait pas aux deux.

M. Chappell: Non, non, mais si je comprends bien, d'après ce professeur, il y a certains dangers de faire cela sur la femme, mais pratiquement aucun pour le faire chez l'homme.

M. Maughan: Nous n'avons pas eu, depuis environ 20 ans, de mortalités découlant de la ligature des trompes chez la femme. C'est une procédure simple, au point de vue opératoire, mais chez le mâle, les effets sont beaucoup plus importants.

M. Chappell: Je vois.

M. Maughan: Avec le recul résultant du blocage du canal déférent, vous avez une certaine atrophie des testicules et, en conséquence, si la cellule de sustentation du testicule, qui est la cellule sécrétant les hormones mâles ou testostérone...

M. Chappell: Je n'aime pas le son de ce que vous dites.

M. Maughan: .. vous êtes un homme diminué.

M. Hogarth: Quand l'homme et la femme sont en train de se demander qui doit y passer, le mari devra se souvenir de votre réponse. J'ai une question complémentaire. Vous avez admis que les avortements thérapeutiques, aux yeux de la profession médicale, sont illégaux mais justifiés en ce qui concerne les médecins, du fait qu'ils sauvent des vies humaines. L'aspect illégal est indiqué par les registres des hôpitaux, ce n'est jamais marqué «avortement».

M. Maughan: Oui.

M. Hogarth: Je croyais que vous leur donniez le nom de D et C dans bien des cas.

M. Maughan: Les avortements thérapeutiques sont indiqués dans le registre comme «avortements thérapeutiques».

M. Hogarth: Mais vous êtes au courant que dans bien des hôpitaux, ils sont indiqués sous le nom de curetage et examen diagnostics?

M. Maughan: Non, on marque toujours «avortements thérapeutiques». Et, dans ce même registre, on indiquera toutes les recommandations qui ont été faites par les différents médecins, et il en faut quatre, au moins, de signés dans chaque dossier d'avor-

[Texte]

therapeutic abortion in our hospital and in the other hospitals.

Mr. Hogarth: Apart from that aspect of the matter, there is always the fear of prosecution in the mind of the doctor that has to, as you suggested, perform the operation. This is particularly manifested should the patient die as a result of hemorrhage or adverse reaction to drugs as the case may be. I am sure you will admit that it is a far better situation for doctors performing these operations to have a certificate from an abortion committee that legalizes the operation. They could certainly proceed with far greater comfort than has been the case in the past.

Dr. Maughan: I am not sure there is any greater comfort, because the tolerance has been such that we have felt relatively comfortable. On the other hand, I would prefer to be legalized than to remain in my illegal state.

Mr. Hogarth: This would be particularly so in the unfortunate event of the unavoidable death of one of the women. Is that not so?

Dr. Maughan: That is right.

Mr. Hogarth: To this extent the Bill that we have before us certainly protects the medical profession in that regard, does it not?

• 1150

Dr. Maughan: It does.

Mr. Valade: I would like to ask Dr. Maughan a question along the same lines as Mr. Hogarth. Of course, there is always the danger of legal proceedings against a doctor who performs an abortion. Would it not be more important to change the law by another amendment that will specifically protect the doctors so that if a doctor does perform an abortion under his professional integrity there would be security under the law to protect the doctors who would judge, within the actual law, that a therapeutic abortion has to be performed? Is my question clear?

My contention is that this legislation does not protect the doctor against criminal procedures. I think there was a case of a doctor in New York who was prosecuted for not having performed some medical services and fined. Perhaps Dr. Lavigne or Dr. Walsh could answer my question.

Dr. Lavigne: There is a question of suit against doctors who would refuse and suit against hospitals that would refuse to have committees on abortion. There is no wording at all in the law protecting the doctors. We

[Interprétation]

tements thérapeutiques et dans les autres hôpitaux aussi.

M. Hogarth: En dehors de cela, il y a toujours la crainte qu'il y aurait poursuite du médecin qui fait cette opération. Et ceci est évident surtout lorsque la patiente meurt à la suite d'une hémorragie ou de l'utilisation de drogues quelconques. Vous admettez certainement qu'il serait beaucoup mieux, pour les médecins qui font de telles opérations, qu'ils aient un certificat d'un comité d'avortements, que cet avortement est légalisé et ils pourraient certainement agir avec plus de confort que par le passé.

M. Maughan: Je ne pense pas que ce soit une question de confort parce que les teneurs en sont telles que nous devons dire qu'elles sont relativement confortables. D'autre part, je préférerais que la chose fut légalisée.

M. Hogarth: Oui. C'est particulièrement vrai en ce qui concerne la mort malheureuse et inévitable d'une femme. N'est-ce pas?

M. Maughan: Oui.

M. Hogarth: Le bill dont nous sommes saisis protège les médecins de ce point de vue-là, n'est-ce pas?

M. Maughan: Certainement.

M. Valade: J'aimerais poser la question suivante au docteur Maughan. Malheureusement, il y a toujours le risque d'une action en justice contre le médecin qui provoque l'avortement. Mais est-ce qu'il ne serait pas plus important de modifier la Loi en adoptant un autre amendement qui puisse protéger le médecin, si le médecin provoque un avortement en toute intégrité professionnelle. Et si la Loi protégeait les médecins, en prévoyant que l'avortement était thérapeutique et inévitable.

En fait, même cette Loi-ci ne protège pas le médecin contre une action criminelle. Il y a, par exemple, le cas d'un médecin de New-York qui a été poursuivi parce qu'il n'avait pas donné certains services et a été mis à l'amende. Le docteur Lavigne pourrait peut-être répondre à ma question si elle n'est pas claire ou le docteur Walsh.

M. Lavigne: Il y a une question de poursuite contre les médecins qui refusent et les hôpitaux qui ne veulent pas de comité sur l'avortement. Rien dans la loi ne protège le médecin. Nous avons eu, il n'y a pas long-

[Text]

know of a recent case in New York City not long ago, where a hospital lost a suit for \$110,000 because the doctor refused to permit an abortion in a case of rubella. So hospitals lose abortion suits and doctors are absolutely not protected in that respect. You understand that in New York State abortion is illegal. I think it is very important that there be wording in the law protecting the freedom of any doctor who refused to be a member of a committee and refused to perform any abortion, and of hospitals that would refuse to have an abortion committee.

I know that the minister of health of a province might oblige some hospitals to have those committees, according to the provincial College of Physicians and Surgeons. That is another point I want to touch on.

It should be given to the provincial College of Physicians and Surgeons to decide which hospitals will perform abortions. You know that accredited hospitals could range from many standards because the standards are not uniform from a small hospital to a large hospital. I think it is a provincial matter as provinces are responsible for the care and the quality of treatment. That should be given to them.

Mr. Hogarth: On a point of order, Mr. Chairman, the point that Dr. Lavigne has raised is extremely interesting but it is my respectful suggestion that it is entirely within provincial jurisdiction as to whether they are going to pass correlative legislature of this nature. Although we might consider it as being one of the effects of what we are doing, I do not think there is anything that the federal government can do to control civil rights within the province in that regard.

Mr. Valade: Mr. Chairman, this is why I raised the point. The present proposed amendment does not protect those doctors who would refuse an abortion and could be sued because of this law. This is a great concern, because I think it is one of the major flaws in this present amendment, and I raise the question so that we might look into all the technical difficulties and incorrectness of this present legislation. The point raised by Mr. Hogarth is quite right, but still there is a point which is very important in that if this legislation goes through then the doctors who, by reason of religious convictions or philosophical convictions or personal feelings, refuse to perform abortions will be liable to be prosecuted by the courts. That is a very major problem pertaining to that bill, and this is why I am asking this question. This is the crucial problem of the present amendment.

[Interpretation]

temps, un hôpital de New-York perdre une cause et être condamné à 110,000 dollars en dommages et intérêts parce que le médecin avait refusé de procéder à l'avortement dans un cas de rubéole. Les hôpitaux perdent les procès d'avortement et les médecins ne sont pas protégés à ce point de vue-là. N'oubliez pas que l'avortement dans l'État de New-York est illégal. Il est donc important de prévoir quelque chose dans la Loi pour protéger la liberté du médecin qui refuserait d'être membre du Comité, qui refuserait de procéder à un avortement et les hôpitaux qui refuseraient d'avoir un comité.

Je sais que le ministre de la Santé d'une province pourrait obliger certains hôpitaux à voir ces Comités, selon le Collège des médecins et chirurgiens de la province. Je pense qu'il faudrait laisser aux Collèges provinciaux des médecins et chirurgiens le soin de décider quels hôpitaux pourront procéder aux avortements. Vous savez que la gamme des hôpitaux accrédités varie, car les normes ne sont pas les mêmes pour les petits hôpitaux et les grands. C'est essentiellement une question du ressort provincial. Les provinces sont responsables de la qualité des soins prodigués.

M. Hogarth: J'en appelle au Règlement. C'est vrai que le point qu'a soulevé M. Lavigne est très intéressant, mais pour moi c'est une question de juridiction essentiellement provinciale. C'est à la Province d'adopter une mesure correlative à ce sujet. Bien que nous puissions considérer que ce sera un des effets de ce que nous faisons, je pense que le gouvernement fédéral n'a rien à faire au sujet des droits civils de juridiction provinciale.

M. Valade: Monsieur le président, c'est pourquoi j'ai soulevé le point. L'amendement envisagé ne protège pas les médecins qui refuseraient un avortement et qui pourraient être poursuivis aux termes de cette Loi. C'est une de nos grandes préoccupations, c'est un défaut de l'amendement envisagé. Je soulève la question parce qu'il serait peut-être bon que nous envisagions toutes les difficultés formelles de cette loi. Le point de M. Hogarth est fort exact; toutefois, il est un autre point fort important en ceci que, si la mesure législative était adoptée, les médecins qui, à cause de leurs convictions religieuses, philosophiques ou personnelles, refuseraient de procéder à un avortement pourraient être traduits devant les tribunaux. C'est un problème très grave que soulève le projet de loi. C'est pourquoi je pose la question. C'est un problème crucial.

[Texte]

Dr. Walsh: Mr. Chairman, I would appreciate an opportunity to say something.

Mr. Valade: If Dr. Walsh would like to clarify...

The Chairman: Mr. Valade, I think we should decide what the question is. As I understand it your question is whether this proposed legislation actually will assist the doctors as far as possible criminal prosecution is concerned. Dr. Lavigne was answering that question and then I digressed into the realm of the constitutional question.

I think the point is well taken by Mr. Hogarth, and if Dr. Lavigne would restrict himself to answering this question as proposed by you, Mr. Valade, I think it would be to the benefit of the Committee.

• 1155

Mr. Valade: I will then ask Dr. Maughan to give us his opinion, as I think Mr. Chappell has been asking some personal opinions on some aspects of the bill.

If you will allow me, doctor, I will read Section 237 of the Criminal Code as it stands now.

Mr. Gilbert: Mr. Chairman, on a point of order. Is Mr. Valade asking the doctor for a legal opinion on a section of the Criminal Code?

Mr. Valade: No, I am just reading the act and asking for an opinion, not a legal opinion. I am asking for a medical opinion as to how this difficulty could be otherwise settled. Since there have been personal opinions asked I think Dr. Maughan could answer that. This is what we are here for—to ask their opinion on the actual law and the amendments. I was referring to the actual law, which reads as follows:

237. (1) Every one who, with intent to procure the miscarriage of a female person, whether or not she is pregnant, uses any means for the purpose of carrying out his intention is guilty of an indictable offence and is liable to imprisonment for life.

This is the present Criminal Code. There was an opinion advanced here in this Committee last week by Professor Mewett, a professor of law, who said that the addition of the word "unlawfully"—Everyone who, unlawfully, with intent to procure the miscarriage, and so on—would serve the same purpose, the same objective that we are now seeking with this full amendment and would protect the doctors because then in the performance of their medical duties they are

[Interprétation]

M. Walsh: Monsieur le président, j'aimerais dire quelque chose.

M. Valade: Si le D^r Walsh voulait préciser...

Le président: Il s'agit de savoir quelle est la question. Vous vous demandez si la mesure législative proposée protégera le médecin contre les risques de poursuite? C'est ce à quoi répondait le docteur Lavigne lorsque j'ai fait une digression dans le domaine constitutionnel.

C'est certainement un point de vue fort intéressant qu'a soulevé, M. Hogarth, et si le D^r Lavigne veut se limiter dans sa réponse à la question que vous avez posée, je crois que cela serait utile au Comité.

M. Valade: Je vais donc demander au D^r Maughan de nous donner son opinion là-dessus, puisque le docteur Chappell a demandé des opinions personnelles en ce qui concerne certains aspects du projet de Loi. Si vous me permettez, je vais lire l'article 237 du Code criminel actuel.

M. Gilbert: J'invoque le Règlement, monsieur le président. Est-ce que M. Valade demande au docteur une opinion juridique sur un article du Code criminel?

M. Valade: Non, pas une opinion juridique. Je demande l'opinion d'un médecin sur la façon de tourner cette difficulté. Comme on a demandé une opinion personnelle, le docteur Maughan pourrait y répondre. Nous sommes ici pour cela—pour leur demander leur avis sur la loi actuelle et les amendements. Je parle de la Loi sous sa forme actuelle qui se lit ainsi:

«quiconque, avec l'intention de procurer l'avortement d'une personne, qu'elle soit enciente ou non, emploie quelque moyen pour réaliser son intention, est coupable d'un acte criminel et passible de l'emprisonnement à perpétuité.

Voilà le Code actuel. Le professeur Mewett, professeur de droit, nous a dit, la semaine dernière, que l'addition du mot «illégalement» après les mots «tous ceux qui illégalement avec l'intention de procurer l'avortement» etc., donnerait le même résultat tout en protégeant le médecin qui, dans l'exercice de son art, agirait légalement et ne serait pas passible de poursuites devant les Tribunaux. Qu'en pense le D^r Maughan?

[Text]

doing it lawfully. They could not be sued or prosecuted by the courts. I wonder what would be the opinion of Dr. Maughan?

Mr. Hogarth: On a point of order, Mr. Chairman, that is entirely a legal question and not within the competence of this witness.

Mr. Valade: I do not know why Dr. Maughan has expressed his concern about the difficulty that this law would create in many hospitals across the country, and perhaps more in Quebec than anywhere else. I do not know. I am asking the doctors because it is their feeling that they are not protected by the law if this amendment goes through.

I am not saying that the Committee will accept the word "unlawfully" but I am asking Dr. Maughan if they would be protected if this amendment were made.

Mr. Hogarth: Mr. Chairman, with the greatest respect, that is entirely a legal question. The doctor could hardly answer what the legal effect in the province of Quebec would be. He certainly could not answer what the legal effect in the provinces of Saskatchewan or Ontario would be, and we would have to have legal opinions from every province in the country as to what their particular laws are with respect to this situation if such an amendment were made. It is my respectful suggestion that it is entirely beyond the competence of this witness to answer that question.

Mr. Gilbert: The witness should be protected, Mr. Chairman. He is not competent to give a legal opinion and this is what Mr. Valade is asking. It is not fair to the witness.

The Chairman: Gentlemen, my ruling is simply this. These gentlemen are here to give their medical opinion as to the ramifications of these clauses. They are here to give their opinion as to the administrative problems and certain technical repercussions. I certainly agree with the contention of Mr. Hogarth that this question is definitely beyond their ambit and I do not think the witness should be asked this particular question.

Mr. Schumacher: Mr. Chairman, if I may say a word on that, both Mr. Chappell and Mr. Hogarth asked this witness whether he would feel more comfortable if these provisions for committees were put in. If that is not the same type of question as that which Mr. Valade asked, if those questions are not of a similar nature if not on the same basis, I would like to know what they are.

[Interpretation]

M. Hogarth: J'invoque le règlement, monsieur le président. C'est une question entièrement juridique et le témoin n'a pas la compétence pour y répondre.

M. Valade: Je ne sais pas pourquoi le docteur Maughan s'est dit préoccupé de certaines difficultés que pourrait poser cette Loi dans certains hôpitaux du pays, peut-être plus au Québec qu'ailleurs. Je le demande aux médecins parce qu'ils croient ne pas être protégés par la loi si l'amendement est adopté. Je ne dis pas que le comité acceptera le mot illégalement. Je demande au Dr Maughan s'ils se sentiraient protégés si cet amendement était adopté.

M. Hogarth: Avec tout le respect que je vous dois, c'est une question absolument juridique. Le docteur ne pourrait certainement pas dire ce que seraient les effets juridiques au Québec, en Saskatchewan ou en Ontario. Il faudrait avoir des opinions juridiques de toutes les dix provinces en ce qui concerne leurs lois à ce sujet, si l'amendement était adopté. Je suggère avec respect que le témoin n'a pas la compétence voulue pour répondre à cette question.

M. Gilbert: Le témoin doit être protégé. Il n'a pas la compétence voulue pour donner une opinion légale et c'est ce que lui demande M. Valade. Cela n'est pas juste pour le témoin.

Le président: Ces messieurs sont ici pour donner leur avis médical sur l'effet de ces articles. Ils sont ici pour donner leurs avis sur les problèmes administratifs et leurs répercussions techniques. Avec M. Hogarth, je conviens très volontiers que cette question dépasse certainement leur compétence et je ne pense pas qu'on devrait la poser aux témoins.

M. Schumacher: Monsieur le président, si je puis me permettre, M. Chappell et M. Hogarth ont demandé au témoin s'il ne se sentirait pas plus en sécurité si ces dispositions relatives aux comités étaient incorporées. Si ce n'est pas là le même genre de question qu'a posée M. Valade, j'aimerais savoir ce qu'elles sont.

[Texte]

Mr. Hogarth: With respect, the questions I asked the witness were based on the premise of what the law would be. Now what Mr. Valade is asking is an opinion of the witness on what would the law be, and there is a big difference.

Mr. Valade: That is not the question, Mr. Chairman. I will rephrase it. Would the doctors feel more protected if this word "unlawfully" were added to the present law, than with what is suggested in the present amendment?

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Dr. Maughan: I would like to be so protected.

Mr. Valade: Mr. Chairman, I have another question for Dr. Maughan. I did not ask too many questions this morning.

I would like to ask Dr. Maughan relative to pregnant women going to see him for abortions. What is his experience of those persons whose health is not being endangered and who go to see him for abortion at an early stage or a later stage? Are these demands for abortions by healthy and normal persons prior to a month, in general? At what stage do they go and see you to ask for abortions, in your experience?

Dr. Maughan: At varying stages, from the time they first know they are pregnant till they are 20 or 22 weeks pregnant.

Mr. Valade: Would the majority of requests be from those who are 20 to 22 weeks pregnant?

Dr. Maughan: No, no, anywhere from three or four days beyond a missed menstrual period to 20 or 22 weeks gestation. Anywhere in that range, if you will, from five to 22 weeks, but with the majority, of course, falling in the first three months.

Mr. Valade: We have heard some words this morning, doctor—I am not going to use the word "murder" because the lawyers will fall on my back. I will use the word "killing", which is not a legal term in its implication. At what stage of the pregnancy do you feel, as a doctor, that an abortion would be killing a human life?

Dr. Maughan: From the time of implantation of the foetus. That would be five days after fertilization, a week before the expected menstrual period that does not arrive.

Mr. Valade: You say five days after...

Dr. Maughan: Fertilization.

[Interprétation]

M. Hogarth: En toute déférence, les questions que j'ai posées étaient fondées sur ce que devrait être la loi maintenant, M. Valade a demandé au témoin son avis sur ce que devrait être la loi, et il y a là une grande différence.

M. Valade: Je vais donc poser ma question autrement. Est-ce que les médecins ne se sentiraient pas plus protégés que par l'amendement proposé si on ajoutait à la loi actuelle le mot «illégalement»?

M. Maughan: J'aimerais bien avoir cette protection.

M. Valade: Je n'ai pas posé beaucoup de questions ce matin.

Je voudrais demander au docteur Maughan, au sujet des femmes enceintes qui vont le voir pour se faire avorter, s'il a connu des femmes dont la santé n'était pas en danger et qui allaient le voir au début de leur grossesse ou plus tard? Ces femmes normales et en bonne santé demandent-elles l'avortement dans le mois qui suit le début de leur grossesse? A quel stade de leur grossesse vont-elles le voir pour se faire avorter?

M. Maughan: Cela varie. Depuis le moment où elles s'aperçoivent qu'elles sont enceintes jusqu'à ce qu'elles aient fait 22 ou 24 semaines.

M. Valade: La majorité des demandes provient-elle de celles qui sont enceintes de 20 à 22 semaines?

M. Maughan: Non. Trois ou quatre jours après une menstruation qui n'a pas eu lieu jusqu'à 20 à 22 semaines de gestation. La majorité évidemment vient nous voir dans les trois premiers mois.

M. Valade: Je ne veux pas employer le mot meurtre ce matin, je parlerai donc «tuer» qui n'a pas d'implication juridique. A quel moment de la grossesse pensez-vous que l'intervention constituerait un homicide?

M. Maughan: A partir de l'implantation du foetus c'est-à-dire cinq jours après la fertilisation ou une semaine avant la date prévue des menstruations qui n'arrivent pas.

M. Valade: Vous dites cinq jours après...

M. Maughan: La fertilisation.

[Text]

Mr. Valade: At that stage of fertilization, life is really in its process.

As a medical man and a professional man, how can you untangle the words "health of the mother"? We have had psychiatric opinions but are the words "health of the mother" sufficient or should we take into consideration "life" as being a more precise word to allow you to perform abortion than the mere fact of saying "the health of the mother", because "health" can be interpreted in many ways. Medically it does not seem to be specific enough to justify the wording. Could you express your opinion on this definition of health of the mother?

Dr. Maughan: Well, you cannot say good health, Mr. Chairman, because the woman does not have good health or she would not be a candidate for abortion. Health is open to a wide spectrum of interpretation. On the other hand, we as a general rule interpret "health" as the continuation of the pregnancy shortening of woman's expected life span by a considerable amount. If she has venereal disease or kidney trouble, for example, we know that is probably going to end her life by the time she is 55. If the continuation of the pregnancy is going to probably make her die at 45, then we consider her a good candidate for therapeutic abortion.

Mr. Valade: Now, if a urinalysis is made on a person who is pregnant, and a small deposit of albumen is found in the urine, this might indicate many things in medicine. Could that be used as a pretext to say that the mother is not healthy at that stage?

Dr. Maughan: Not without very intensive investigation of the woman's renal function.

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I might say that in the past ten days I have turned down a request for therapeutic abortion on a woman who has one kidney and that kidney is a transplant from a cadaver, and that kidney has about 50 per cent function. Now, we know this woman does not have prospect of a long healthy life. On the other hand we have the only experience in the world with a woman who has carried a pregnancy with a cadaver kidney transplant. It is true that she has diminished kidney function, and we know that she is not going to live long, but we do not think that carrying the pregnancy is going to shorten her life span by that much, and she is going to carry her pregnancy, and wants to.

[Interpretation]

M. Valade: A ce stade de la fertilisation, il y a déjà vie.

En votre qualité de médecin et de professionnel, pouvez-vous définir avec précision l'expression «santé de la mère». Nous avons entendu des opinions de psychiatres, mais, est-ce que le mot «santé de la mère», suffit, est-ce qu'on ne devrait pas plutôt parler de la «vie», mot dont l'emploi unique vous permettrait de pratiquer l'avortement parce que l'expression «santé de la mère» peut être interprété de plusieurs façons. Le mot «santé» me paraît trop général du point de vue médical. Est-ce que vous pourriez me donner votre avis sur l'expression «santé de la mère»?

M. Maughan: Vous ne pouvez pas parler de bonne santé. Santé peut être interprétée de diverses façons. Si la mère était en santé, elle n'aurait pas à demander l'avortement. Nous interprétons cette expression en étudiant si la continuation de la grossesse peut abrégier la vie de la femme. Si elle souffre de maladies vénériennes ou de troubles rénaux, nous savons qu'elle mourra vers 55 ans. Si la continuation de la grossesse peut la faire mourir vers 45 ans, c'est une bonne raison d'avortement thérapeutique.

M. Valade: Supposons qu'une analyse de l'urine d'une personne enceinte révèle la présence d'un peu d'albumine dans l'urine, cela pourrait indiquer à un médecin beaucoup de choses. Est-ce qu'on ne pourrait pas utiliser cela comme prétexte pour dire que la femme n'est pas en bonne santé à ce stade?

M. Maughan: Non, il faudrait de longs examens sur les fonctions rénales de la femme.

Il y a dix jours, j'ai refusé de procéder à un avortement thérapeutique. Il s'agissait d'une femme qui n'a qu'un rein et ce rein a été transplanté d'un cadavre, et ce rein fonctionne à peu près à 50 p. 100. Nous savons qu'elle ne vivra pas longtemps en très bonne santé. D'autre part, nous avons l'expérience unique d'une femme enceinte avec un rein transplanté. Il est vrai que ses fonctions rénales sont réduites et nous savons qu'elle ne vivra pas longtemps mais nous ne pensons pas que le fait de mener à terme sa grossesse diminuera la durée de sa vie, et elle va la mener à terme. Elle le veut d'ailleurs.

[Texte]

Mr. Valade: That is all, thank you, Mr. Chairman.

The Chairman: A supplementary, Mr. Hogarth?

Mr. Hogarth: One of the things that has concerned me about this section we are dealing with is where it says that "such female person would or would be likely to endanger her life or health". Well, in the broadest sense, is it not true that all pregnancies endanger health?

Dr. Maughan: No. Women are healthier for having had children.

Mr. Hogarth: For having had them, yes, but during the course of pregnancy their health is, in a sense, endangered. Is that not so?

Dr. Maughan: Well, our maternal mortality today is such that I do not think that we can consider that their life is endangered any more than by walking across the street outside. Not as much.

Mr. Hogarth: Do you think you could get the vast number of women in this country who have borne children to suggest that while they were pregnant their health was no more endangered than while they were not?

Dr. Maughan: Well, they were better while they were pregnant, much better.

Mr. Hogarth: I see; all right.

Dr. Maughan: Infinitely more healthily feminine and femininely healthy.

Mr. Hogarth: I will take that home with me this week end.

The Chairman: Mr. Peters?

Mr. Hogarth: You will probably be getting a letter.

The Chairman: Mr. Valade?

Mr. Valade: I would like to ask an additional question. One of the doctors said this morning that not enough research, or not enough knowledge, had been secured up till now, to make a decision as to the validity or the opportunity of bringing in this legislation at this time. Is that your opinion, Dr. Maughan, that more study should be done in this field before we actually decide on this legislation?

Mr. Gilbert: On a point of order, Mr. Chairman.

[Interprétation]

M. Valade: C'est tout, je n'ai plus de question.

Le président: Une question supplémentaire, monsieur Hogarth?

M. Hogarth: Il y a quelque chose qui me préoccupe en ce qui concerne l'article qui nous intéresse, où il est dit que «cette personne mettrait en danger sa santé ou sa vie». Est-ce que toutes les grossesses ne mettent pas en danger la santé?

M. Maughan: Non, les femmes se portent mieux après avoir eu des enfants.

M. Hogarth: Sans doute, mais pendant la grossesse, leur santé est, dans un certain sens, compromise?

M. Maughan: La mortalité maternelle est telle aujourd'hui que je ne pense même pas que nous puissions supposer que la santé de la femme soit le moins du monde en cause, pas plus que de traverser la rue à pied.

M. Hogarth: Il y a beaucoup de femmes qui ont donné naissance à des enfants. Est-ce qu'elles conviendront avec vous qu'elles se portaient aussi bien pendant leur grossesse?

M. Maughan: Au contraire, elles se portaient beaucoup mieux pendant leur grossesse.

M. Hogarth: Je vois.

M. Maughan: Bien plus en santé et féminines.

M. Hogarth: Je vais rapporter ce renseignement avec moi.

Le président: Monsieur Peters?

M. Hogarth: Vous recevrez probablement une lettre plus tard.

Le président: Monsieur Valade?

M. Valade: J'aimerais poser une autre question. Quelqu'un disait ce matin qu'on n'avait pas fait assez de recherches jusqu'ici, qu'on ne connaissait pas assez la question, en ce moment, pour prendre une décision, en ce qui concerne l'opportunité de présenter cette mesure. Est-ce que c'est votre opinion, docteur Maughan? Est-ce qu'il ne faudrait pas étudier davantage la question avant que nous nous décidions?

M. Gilbert: J'invoque le règlement.

[Text]

Mr. Valade: I am asking his opinion. I am allowed to ask an opinion of a renowned doctor.

The Chairman: I think, Mr. Valade, I have given you much latitude. I think we all know the purpose of having the doctors here. The real purpose, as I have said ad nauseam, is to supply the Committee with technical knowledge from their experience from an administrative standpoint. I do not think that we should delve into general concepts of pro and con on this bill on the question of abortion, and I think this question would lead to that.

Mr. Valade: The reason for my question, Mr. Chairman, is that when we saw those slides this morning, mention was made that medical science is progressing and it has now become easier for the doctor to hear a heartbeat, for instance, at an earlier stage than it was before, and I believe that with the advancement of science maybe doctors at a certain time will be in a better position to state very clearly at what stage an abortion could be performed.

It is in the light of these opinions that I am asking the question. I am not asking a personal opinion; I am asking a medical opinion, because this is pertinent to what we heard this morning that a certain time ago it was not possible to hear the heartbeat until so many weeks—I forget how many were mentioned this morning. Now, with the advancement of technical and medical science, it has become easier to determine life at an earlier stage than before; this is why I am asking this question of Dr. Maughan, because of the research and the lack of research existing in this regard.

The Chairman: How does this question pertain to the clauses in this bill, Mr. Valade?

● 1210

Mr. Valade: It pertains to them because there is no provision in the legislation as to when an abortion could be performed.

Under the present legislation an abortion could be performed after three, or four, or five months, yet it was established this morning that after a certain number of weeks human life really exists. This was scientifically and medically proven this morning. This legislation does not take that factor into consideration.

That is why I ask the question of Dr. Maughan.

The Chairman: What particular clause are you referring to?

[Interpretation]

M. Valade: Je ne fais que demander l'opinion d'un médecin renommé.

Le président: Monsieur Valade je vous ai donné beaucoup de temps. Nous avons répété plusieurs fois que les médecins étaient ici pour nous fournir des connaissances techniques fondées sur leur expérience ainsi que leur opinion au point de vue administratif. Nous ne devrions pas, je pense, arriver à des considérations aussi générales que celles-là. C'est le sens de votre question, monsieur Valade.

M. Valade: Si j'ai posé la question c'est que, quand nous avons regardé les diapositives, on a dit que la science médicale a fait de très grands progrès et qu'il devient désormais plus facile, pour un médecin d'entendre, par exemple, battre un cœur plus tôt pendant la grossesse. Je crois qu'avec les progrès de la science les médecins pourront un jour dire clairement à quel moment on pourra provoquer l'avortement.

C'est pourquoi je pose la question. Je ne demande pas une opinion personnelle mais bien une opinion médicale parce que cela a trait à tout ce que nous discutons ce matin. Il y a quelque temps, il était impossible d'entendre le cœur battre avant une certaine date limite. Je ne sais pas de quelle période on a parlé ce matin, de combien de semaines. Mais, avec les progrès de la science médicale, avec le progrès de la technique, il est désormais plus facile de déterminer s'il y a vie plus tôt qu'avant, et c'est le pourquoi de ma question. A cause des recherches, ou du manque de recherches peut-être, dans ce domaine.

Le président: Quel rapport est-ce qu'il y a avec la question que nous étudions?

M. Valade: Cela a tous les rapports qu'il faut. Rien ne dit, dans la mesure que nous étudions, le moment où l'avortement pourrait intervenir.

En vertu de la présente mesure législative, l'avortement pourrait se faire après trois, quatre ou cinq mois, mais on a établi ce matin qu'après quelques semaines, la vie humaine existait vraiment ce qui a été prouvé scientifiquement et médicalement. La présente mesure législative ne tient pas compte de ce facteur. C'est pourquoi je pose la question au Dr Maughan.

Le président: De quel article voulez-vous parler?

[Texte]

Mr. Valade: I am referring to the amendment, Mr. Chairman. Perhaps I should refer to subsection (4) under clause 18 on page 42.

The Chairman: If you direct the question on that particular clause I would consider it to be in order.

Mr. Valade: I will direct my question to paragraph (4) under Clause 18 on page 42. I am rephrasing my question to Doctor Maughan.

Doctor Maughan, in view of this, do you think we actually have done sufficient scientific research to implement this law at the present time, or should we have further studies before we decide on this legislation?

Perhaps I should read line 25 on page 42:

...for the purpose of carrying out his intention to procure the miscarriage of a female person,...

In view of the limited research, do you think this amendment is justified at the present time?

Dr. Maughan: I think I can answer that by saying that my judgment today is not nearly as good as it will be 25 years from now, if I live that long practising medicine; and I think it is very much better than it was 25 years ago. This is because there are advances in medicine that would give me a broader perspective and a better ability to answer questions about a woman's health.

We know that prior to 12 weeks' gestation—12 weeks from the last menstrual period—we usually do the abortion technically per vaginam by dilating the cervix and either aspirating or scraping out the products of conception from the wall of the uterus. After 12 weeks' gestation it is usually done by laparotomy, by opening the abdomen and cutting into the uterus from above, where one can control hemorrhage and make sure all of the products are removed so that there is no after-effect of infection, hemorrhage and so on.

This is all just the technique of this sort of thing. I cannot tell you today that some woman on whom I might do a therapeutic abortion, on good justifiable grounds, with good judgment by an abortion committee probably would not be able to carry that pregnancy perfectly well twenty years from now, but we cannot wait for the 20 years because gestation just will not wait that long. We have to do what we can in the light of

[Interprétation]

M. Valade: Je parle de la modification, monsieur le président. Peut-être alors devrais-je faire allusion au paragraphe (4) de l'article 18, à la page 42.

Le président: Si vous posez votre question sur cet article particulier, je considérerai votre question comme dans les règles.

M. Valade: Bon. Ma question portera sur le paragraphe (4) de l'article 18, à la page 42. Je reprend ma question au D^r Maughan. Docteur Maughan.

Vu cela, pensez-vous que nous avons fait assez de recherches scientifiques pour appliquer la présente loi à l'heure actuelle, ou ne nous faudrait-il pas examiner davantage la situation avant de prendre une décision?

Je cite la ligne 25, à la page 42:

«...pour réaliser son intention de procurer l'avortement d'une personne du sexe féminin...»

Vu les recherches limitées, pensez-vous que cette modification est justifiée actuellement?

M. Maughan: Je peux répondre à cette question en disant que mon jugement est beaucoup moins éclairé maintenant qu'il le sera dans vingt-cinq ans si j'exerce encore la médecine. Il est pourtant bien plus éclairé qu'il ne l'était il y a vingt-cinq ans, parce qu'il y a eu certainement de grands progrès dans la médecine, qui me permettent de répondre beaucoup mieux à des questions concernant la santé des femmes.

Nous savons qu'avant la gestation de douze semaines, douze semaines depuis les dernières menstruations, nous faisons habituellement l'avortement vaginal de façon technique, en dilatant le cervix et en aspirant ou en grattant les produits de la conception du mur de l'utérus. Après douze semaines de gestation, cela se fait ordinairement par la parotomie, en ouvrant l'abdomen et en pénétrant dans l'utérus par le sommet, où l'on peut contrôler l'hémorragie et s'assurer que tous les produits sont complètement évacués, de sorte qu'il ne peut pas y avoir de séquelles d'infection, d'hémorragie, etc.

Tout cela n'est que la technique de ce genre de chose. Je ne pense pas que je puisse dire aujourd'hui, qu'une femme sur laquelle je pratiquerais un avortement thérapeutique, pour de bonnes raisons justifiables reconnues par un comité de l'avortement, ne pourrait probablement pas, dans vingt ans, supporter cette grossesse parfaitement bien, mais nous ne pouvons pas attendre vingt ans, parce que la gestation n'attendra pas vingt ans. Le

[Text]

therapeutic knowledge at this stage of our career.

I think that the bill as it is presently written—and I do not mean this as a legal opinion I am talking from a purely medical point of view—is not bad at all. I am quite surprised at how my legal co-professionals have been able to come up with not such a bad bill.

Mr. Valade: Dr. Maughan, I have just one final question. After what stage of pregnancy—and I have asked this question before, and I want to be very clear—are you sure you are killing a living, human foetus?

• 1215

Dr. Maughan: Five days after fertilization.

The Chairman: Gentlemen, it is 12.15. I think perhaps we could hear from one or two further members and then adjourn, if that is the wish of the Committee.

Mr. Peters: What I am interested in I cannot point out in a clause of the bill, because it is not there. I am interested in what is not in the bill. It relates to the abortions that are being done today—and you have mentioned that there are a few at McGill and a few at Windsor in the hospital, in a fairly controlled environment. It is, however, safe to say that 20 to 30 times as many are being done by doctors and other persons and being self-induced, in that three-month period. What would be the effect on the general public and what protection would the general public be given if these sections in the bill were removed entirely?

Dr. Maughan: I do not think I understand your question.

Mr. Peters: Most of the abortions are being done outside the control of medical practice. They are being done in some cases by medical practitioners, but they are also being done outside of the law and outside of medical practice, and the public is not being protected at all. You find, I am sure, that many of those who come to you hemorrhaging after an illegal abortion are in very serious medical condition and this, of course, is not in the interest of the public.

Not from a hospital point of view, but from a medical practitioner's point of view would the medical profession be able to provide, in a much more medically accepted manner, the service that is now being provided

[Interpretation]

mieux que nous puissions faire, c'est d'agir au meilleur de nos connaissances thérapeutiques à cette phase de notre carrière.

Le projet de loi, sous sa forme actuelle, et ce n'est pas une opinion juridique, je parle du point de vue purement médical, n'est pas mauvais du tout. Je suis assez étonné de la façon dont nos avocats ont pu rédiger un projet de loi qui au fond n'est pas mauvais.

M. Valade: Docteur Maughan, une dernière question. J'ai demandé cette question auparavant, et je veux être très clair. A quel moment de la grossesse êtes-vous sûr que vous tuez un foetus humain vivant.

M. Maughan: Cinq jours après la fécondation.

Le président: Il est midi un quart, nous pourrions peut-être entendre un ou deux autres députés et peut-être lever ensuite la séance si c'est le désir du Comité.

M. Peters: Ce qui m'intéresse ce n'est pas ce qu'il y a dans le bill, c'est ce qu'il n'y a pas dans le bill. Il s'agit ici d'avortements qui se font de nos jours, et vous avez mentionné qu'il y en a quelques-uns à McGill et Windsor à l'hôpital, dans une ambiance assez bien contrôlée. On peut toutefois dire, sans crainte de se tromper, qu'il y a de 20 à 30 fois autant d'avortements qui sont faits par des médecins et d'autres personnes, et des avortements provoqués par la personne enceinte elle-même, par exemple, durant cette période de trois mois. Quel serait l'effet sur le public en général, et quelle protection lui serait donnée, si ces articles du bill disparaissaient complètement?

M. Maughan: Je ne crois pas comprendre la question.

M. Peters: La plupart des avortements se font en dehors de la présence des médecins. Ils sont faits parfois par des praticiens, ils se font d'une façon illégale et paramédicale, et le public n'est pas protégé du tout. Je suis sûr que celles qui viennent vous voir souffrant d'hémorragie après un avortement illégal, se trouvent dans une situation extrêmement grave; et cela évidemment, n'est pas dans l'intérêt du public.

Si le présent article était supprimé complètement du Code, est-ce que les médecins, en général, je vous demande votre opinion de médecin, non pas de médecin d'hôpital, est-ce que les médecins ne pourraient pas donner les

[Texte]

if this were removed from the Code entirely.

Dr. Maughan: You mean if this proposed new section...?

Mr. Peters: If all abortion legislation were removed from the Criminal Code? In other words, what I am suggesting is that if it were removed from the Criminal Code you would be able to do an abortion as a general practitioner up to a period of three months. When you talk about surgery and cesarian section you are talking about a much more serious problem, but in the three months...

Dr. Maughan: Ceasarians are not necessarily serious at all.

Mr. Peters: My opinion is that some women have a great many scars.

Mr. Hogarth: Would you say 10 per cent!

Mr. Peters: The problem the public is faced with is that these abortions are being done. Doctors in some cases are very reluctant to do them and the women go to other people. If the doctor had the right to do a D and C in his office—it is a fairly simple operation, I was informed, by a doctor very well known in Montreal, who is doing about 40 a day, and some of them for the City of Montreal—he did them in his office—I think the public would be protected.

If the practitioner could perform this operation without the procedure of going to a board, as you would remove someone's appendix—and I am not suggesting it is in the same category—do you think the medical profession could protect the public.

Dr. Maughan: No; I am very sure we could not protect the public if there was carte blanche—laissez-passer—for all individuals with a medical degree, or a medical licence, to do abortions when and as they wished and under whatever circumstances they wished. You who have never sat behind a gynaecologists desk have no idea how difficult it is to refuse a woman in pursuit of an abortion. They are very difficult to refuse in many other things, but when they are in pursuit of abortion you are in trouble.

• 1220

Mr. Peters: I am interested in the medical aspect. We have heard competent witnesses

[Interprétation]

services qui sont maintenant fournis d'une façon médicalement plus acceptée?

M. Maughan: Vous voulez dire si le nouvel article...?

M. Peters: Si tout ce qui concerne l'avortement était supprimé du Code criminel. Voici ce que je voudrais dire, en d'autres termes. Si ce n'était pas dans le Code criminel, vous pourriez pratiquer un avortement à titre de praticien général jusqu'à une période de trois mois. Lorsque vous parlez de chirurgie et d'hystérotomie abdominale, vous parlez d'un problème beaucoup plus grave, mais dans les trois mois...

M. Maughan: Les césariennes ne sont pas nécessairement graves.

M. Peters: Il y a un grand nombre de femmes qui portent beaucoup de cicatrices.

M. Hogarth: Diriez-vous 10 p. 100?

M. Peters: Le problème qui confronte le public vient de ce que ces avortements se font. Des médecins dans plusieurs cas hésitent beaucoup à intervenir, et les femmes s'adressent à d'autres personnes si le médecin avait le droit de pratiquer ce que j'ai appelé des curetages dans son cabinet, c'est une opération assez simple, d'après ce que m'en a dit un médecin bien connu de Montréal qui en fait une quarantaine par jour, quelques-unes pour la ville de Montréal. Il les faisait chez lui dans son cabinet. Le public était protégé dans ce cas-là.

Mais en général, si le praticien pouvait pratiquer cette intervention sans avoir à s'adresser à un comité, aussi simplement, par exemple, qu'on procède à l'ablation de l'appendice, et je ne veux pas dire que c'est dans la même catégorie, est-ce que vous pensez que les médecins pourraient protéger le public?

M. Maughan: Non, nous ne pourrions pas protéger le public si nous avions carte blanche, si tous les individus munis d'un diplôme ou d'une licence étaient libres de pratiquer des avortements dans toutes les circonstances qu'ils désirent. Vous n'êtes pas gynécologue, vous n'avez pas idée vraiment comme il est difficile de refuser une femme qui recherche un avortement. Il est assez difficile de refuser quoi que ce soit aux femmes, mais lorsqu'on essaie de leur refuser l'avortement, ça devient très grave.

M. Peters: C'est le côté médical qui m'intéresse. Des témoins compétents nous ont dit

[Text]

say that this will not eliminate the illegal abortion that is being performed now. This probably will not eliminate one out of 5,000 that are performed.

Does it not concern you, knowing that we are passing a law that will protect you and give you protection which you already have by being able to co-operate with the four people you mentioned you had who were involved in each therapeutic illegal abortion now in a hospital. The doctor does not have this protection, but illegal abortions are still taking place. Do you not think that the medical profession, looking at it from the public's point of view, could provide this from their much more advantageous position than we are going to do in passing this piece of legislation?

Dr. Maughan: No, because I do not think the occasional abortionist could do as good a job as the professional criminal abortionist. I think that we would have an infinitely greater number of disasters if one freed every medical practitioner with the ability to do abortions when or if he saw fit. I think we would be in worse trouble.

Mr. Peters: This of course is a very surprising statement, in my opinion, and it is probably a good boost for the abortion mills—and some of them probably think they are competent. How do you justify the allowing of these? Is it the lack of education that the general practitioner has?

Dr. Maughan: I think probably his incompetence as a surgeon, primarily. I must admit that every time I have done a therapeutic abortion by curettage I have marvelled at the courage of the fellow who does them downtown without competent anesthesia, competent blood-banking facilities and so on. I am just amazed at what foolhardy courage he has.

Mr. Peters: Is it not a regular practice of doctors to do a D and C?

Dr. Maughan: No. Gynecologist yes; doctors generally, no.

Mr. Peters: I come from northern Ontario and I have never heard the term 'gynecologist' up there. Now there may be one or two—there probably are.

So in small hospitals you might have a board of four doctors, which constitute the whole staff, and none of them would be gynecologists.

[Interpretation]

que cela n'éliminera pas un seul avortement illégal. Pas un des 5,000 qui sont pratiqués.

Est-ce que cela ne vous inquiète pas, sachant que nous allons adopter une loi qui vous protégera et vous accordera la protection dont vous jouissez déjà parce que vous pouvez collaborer avec les quatre personnes dont vous avez parlé et qui ont été en cause dans chaque avortement thérapeutique illégal. Le médecin actuellement n'est pas protégé et pourtant ces avortements illégaux ont toujours lieu. Est-ce que vous ne pensez pas que les médecins, si l'on considère cela du point de vue du public, pourraient voir à cela d'une position beaucoup plus avantageuse que nous le pourrions en adoptant cette mesure législative?

M. Maughan: Non, je ne pense pas que l'avorteur occasionnel puisse travailler aussi bien qu'un avorteur criminel de profession. Il y aurait beaucoup plus de cas malheureux si tous les médecins pouvant pratiquer l'avortement étaient libres de provoquer des avortements lorsqu'ils le jugeraient utiles. Je pense que la situation deviendrait beaucoup plus grave.

M. Peters: Alors, cela me paraît une déclaration assez surprenante. C'est probablement une bonne publicité pour les avorteurs clandestins. Certains pensent probablement qu'ils sont compétents, mais je me demande comment pouvez-vous justifier que l'on permette cela? Est-ce que c'est dû au manque de formation du praticien général?

M. Maughan: Je crois que c'est son incompetence en tant que chirurgien surtout. Je dois admettre que chaque fois que j'ai dû faire des avortements thérapeutiques par curetage, je me suis étonné du courage de ceux qui font ça clandestinement sans anesthésie et sans service de transfusion. Il faut vraiment être insensé pour faire cela.

M. Peters: Est-ce que ce n'est pas de la pratique courante de la part des médecins de faire des curetages?

M. Maughan: Pour un gynécologue, oui, mais pas pour un médecin.

M. Peters: Je viens du Nord de l'Ontario, je n'ai jamais entendu le mot «gynécologue». Il y en a peut-être un ou deux.

Donc, dans la plupart des petits hôpitaux, vous pouvez avoir un conseil de quatre médecins qui représenterait tout le personnel.

[Texte]

cologists, pediatricians or anything else—they would be just general practitioners.

Dr. Maughan: Yes. There is a complete difference from doing a curettage on a non-pregnant uterus and on the uterus that is two, two and a half or three months pregnant.

The difference in bleeding is fantastic. It is a difference between one half an ounce and a pint to a quart. It is an altogether different procedure and the uterine wall instead of being half an inch thick tough muscle is stretched out soft and thin and you can slip a curette through it so easily. Then, of course, you have hemorrhage in the parenchymal cavity, peritonitis and all the complications. It is a completely different problem.

Mr. Peters: While I interviewed this particular doctor three or four young girls walked out of that office. They were in there for a very short period of time and they walked out minus \$500. They walked out and they had received no general anesthetic. I am not a doctor so I do not know, but it did not seem to me to be very much of a problem.

Dr. Maughan: I would make a fair bet that three out of the four were not pregnant and this is the way the abortionist makes his fortune.

• 1225

The Chairman: Gentlemen, it is 12:25 p.m. I feel that we have had a very exhaustive inquiry and that we should adjourn.

I would like on behalf of the Committee to thank the doctors—Dr. Lavigne, Dr. Walsh, Dr. Maughan and...

Mr. McQuaid: Mr. Chairman, will the doctors be back again this afternoon.

The Chairman: No, this was not the intention.

Mr. McQuaid: I wonder if I may ask just one question, Mr. Chairman, which perhaps one of the doctors will be able to answer.

I would judge that at least one of the intents of the government in introducing this legislation—and I think this is something which as a Committee we have to concern ourselves with—was to protect the health and the lives of women. Now could I ask one of you gentlemen if, in your opinion, this legislation will protect the lives and health of women, if it is passed?

[Interprétation]

médical. Aucun d'entre eux ne serait gynécologue, pédiatre, etc. Ce ne sont que des omnipraticiens.

M. Maughan: Mais c'est une chose que de faire un curetage sur un utérus lorsque la femme n'est pas enceinte et une autre lorsqu'elle est enceinte de deux ou trois mois.

La différence d'hémorragie est tout à fait fantastique, d'une once et demie à une chopine ou une pinte. C'est une procédure tout à fait différente. La paroi utérine n'est plus un muscle robuste d'un demi-pouce d'épaisseur. Elle est étirée et amincie et on peut facilement la transpercer avec une curette. Il se produit alors une hémorragie dans la cavité parenchymateuse, une péritonite et toutes les complications qui suivent. C'est un problème tout à fait différent.

M. Peters: Alors que j'interviewais ce médecin, trois au quatre jeunes filles sortirent de son bureau. Elles n'y ont été que très peu de temps et sortirent allégées de \$500. Elles n'avaient pas été anesthésiées. Je ne suis pas médecin, mais cela ne m'a pas semblé être un gros problème.

M. Maughan: Je vous parie que trois sur les quatre n'étaient pas enceintes, et c'est comme ça que les avorteurs font de l'argent.

Le président: Messieurs, il est 12h25. Je crois que nous avons eu une discussion très approfondie et que nous devrions ajourner la séance.

J'aimerais remercier les différents médecins qui ont participé ce matin.

M. McQuaid: Reviendront-ils cet après-midi?

Le président: Non, ce n'était pas prévu.

M. McQuaid: Je voudrais simplement poser une question, à laquelle un des médecins pourrait répondre. Une des intentions du gouvernement en présentant ces mesures législatives, c'est quelque chose qui doit nous préoccuper en tant que comité, n'a-t-elle pas été de protéger la santé et la vie des femmes? Puis-je demander à l'un de vous, messieurs, si à votre avis, cette loi protégera la vie et la santé des femmes, si elle est adoptée?

[Text]

Dr. Lavigne: It will protect the ones who will be accepted on that Committee, but I think it is very limited in that aspect. If I could resume our opinions regarding that subject, the main problem regarding that bill is the words "would be likely to endanger" because that brings on the problem of the psychiatric indication which is very hard to define precisely.

There is one question that I would like to ask you, if I may. How is a doctor who refuses to participate in an abortion committee or to perform an abortion that has been approved by a committee protected? That is a very important point. If you intend to pass this bill we would like something in it to protect the freedom of a person who refuses to participate in these techniques. It is very important.

The Chairman: Thank you very much, doctor.

Mr. Rondeau: I am sorry, I have a question that I have wanted to raise for a few minutes.

Monsieur le président, combien de femmes au Canada sont mortes l'an dernier ou au cours d'une année précédente, faute d'avoir subi un avortement.

Dr. Lavigne: I think Dr. Lorrain could answer that question.

M. Lorrain: Je ne pourrais pas répondre exactement à la question telle qu'elle a été formulée. Cependant si vous voulez connaître le nombre de personnes qui sont mortes à la suite d'avortements, c'est bien différent. Les statistiques de l'Association médicale canadienne ont été publiées dernièrement pour l'année 1967, et elles rapportent 8 décès à la suite d'avortements. Ce n'est pas là le nombre de personnes mortes parce qu'elles n'ont pas été avortées. C'est là une statistique impossible à trouver.

M. Lavigne: J'aimerais remercier tous les membres du comité de la justice et des questions juridiques de nous avoir écoutés ce matin et d'avoir posé ces questions qui franchement étaient extrêmement intéressantes, et en même temps tous mes collègues qui ont participé au débat en répondant aux questions que vous avez eu la bonté de leur poser.

Mr. Hogarth: I think the witnesses who have supplied us with such very valuable information should be given their expenses in the usual way.

I would so move.

[Interpretation]

M. Lavigne: Elle protégera les cas qui seront acceptés par le Comité, mais c'est assez limité. Je vais résumer nos opinions en la matière. Le problème concernant ce bill sont les mots «est susceptible de mettre en danger» parce que ceci pose le problème des indications psychiatriques qui sont extrêmement difficiles à définir avec exactitude.

Il y a une question que j'aimerais vous demander si vous me le permettez. Comment est-ce qu'un médecin qui refuse de participer à un comité d'avortements ou refuse de faire un avortement qui a été accepté par un comité, comment est-il protégé? Voilà une question très importante. Si vous avez l'intention de voter cette loi, nous aimerions que quelque chose soit inscrit dans le bill pour protéger la liberté d'un médecin qui refuse de participer à ces techniques.

Le président: Merci.

M. Rondeau: J'ai une question que je veux poser depuis quelques minutes.

Mr. Chairman, how many women, in Canada, died last year or one, of the proceeding years because they did not have an abortion?

M. Lavigne: Je crois que le D^r Lorrain pourrait répondre à cette question.

Dr. Lorrain: I cannot give you an exact answer to your question. However, if you want to know the number of persons who died following an abortion, it is quite different. That statistics of Canadian Medical Association were published recently for 1967, and they show 8 deaths following abortion. This is not the number of persons who died because they could not have an abortion. It is impossible to obtain statistics for this.

Dr. Lavigne: I would like to thank all the members of the Committee on Justice and Legal Affairs for listening to us this morning, and for the very interesting questions that they have put to us. I would also like to thank my colleagues who have participated in the discussion by answering the questions that were put to them. Thank you.

M. Hogarth: Je voudrais remercier les témoins qui nous ont fourni de précieux renseignements. J'espère qu'on leur paiera leurs dépenses comme d'habitude. Je fais la proposition en ce sens.

[Texte]

Mr. Valade: Mr. Chairman, I think it would be really in order to thank these gentlemen because I know they have made a sacrifice to come this morning. They are all very busy medical doctors and we do appreciate very much their coming today to answer our queries. They have shown great patience and we thank them very much for their very enlightening contribution.

The Chairman: Thanks very much, Mr. Valade. We will adjourn until 3:30 p.m.

AFTERNOON SITTING

● 1552

The Chairman: Gentlemen, although we do not have a quorum we will proceed. If it is agreeable to the Committee we can go over the clauses, ask for comments and stand the clauses, and then when the quorum is reached I think it will be in order either to pass or to reject the clauses. This will save time.

Mr. Hogarth: Mr. Chairman, before we proceed I was wondering if we could possibly put the law officers of the Crown to work? I am concerned about the evidence that was given this morning by Dr. Maughan pertaining to what the medical profession would consider the definition of the words "miscarriage of a female person" to be in Section 237. There, as I understand his evidence, he says that that is a synonym for abortion and that that section pertains to an operation or process that would take place within the first 26 weeks of pregnancy. I was just wondering if the law officers of the Crown could advise us whether or not there has been any judicial interpretation of those words or whether the medical definition that Dr. Maughan gave us this morning would apply?

I think it is important for this reason: that if the provisions of Section 237 apply solely to an operation that takes place within the first 26 weeks of pregnancy, then by virtue of the amendment we have made to Section 209 by inserting the words "in the act of birth", it appears to me that between the 26th week of pregnancy and say, the 36th week, when birth is about to take place and the child is in the act of birth, any drug or any operation could take place upon the body of a woman to remove a child and it would be no offence because that person would not be intending to procure the miscarriage. As the doctor explained he would be inducing the birth and, of course, at a very early stage that would be producing a dead child, in all likeli-

[Interprétation]

M. Valade: Je sais que ces messieurs ont fait un grand sacrifice pour venir ici. Je sais qu'ils sont tous très occupés en tant que médecin, je crois que nous apprécions beaucoup le fait qu'ils soient venus ici pour répondre à nos questions, ils ont fait preuve de patience et nous les remercions infiniment.

Le président: Merci. Nous levons la séance jusqu'à 3.30 heures.

SÉANCE DE L'APRÈS-MIDI

Le président: Messieurs, je crois que nous pouvons commencer même sans le quorum. Si les membres sont d'accord, nous allons étudier les articles; quand il y aura quorum, nous pourrions les soumettre au vote. Ceci épargnera du temps.

M. Hogarth: Monsieur le président, avant que nous allions plus loin, je me demande si nous ne pourrions pas donner un peu de travail aux conseillers juridiques du ministère; Le docteur Maughan a dit ce matin, exprimant l'opinion de sa profession, quelque chose qui m'a préoccupé. En ce qui concerne l'article 237 du Code actuel où il est question de «l'avortement d'une personne du sexe féminin». C'est que pour lui le mot «miscarriage» en anglais serait synonyme d'avortement. Il s'agirait d'un procédé ou d'une opération faits pendant les 26 premières semaines de la grossesse. Je me demande si les conseillers juridiques de la Couronne pourraient nous dire si oui ou non, il y a eu une interprétation juridique de cette expression ou si la définition médicale du docteur Maughan, ce matin, vaut dans ce cas-ci.

Ceci est important pour cette raison-ci: si la définition de l'article 237 ne s'applique qu'à une opération qui a lieu dans les 26 premières semaines de la grossesse, alors aux termes de l'amendement que nous avons fait à l'article 195, l'amendement que vous avez apporté à l'article 209, en inscrivant les mots: «au cours de la mise au monde», il me semble qu'entre la 26^e semaine de la grossesse et mettons, la 36^e semaine, au moment où l'enfant va naître, toute intervention au moyen de stupéfiants ou toute opération pourrait se faire pour enlever l'enfant sans qu'il y ait délit. Il ne s'agirait pas là de provoquer une fausse couche, puisqu'il ne s'agirait pas en somme de provoquer une fausse couche; l'enfant, évidemment, serait mort à moins, comme la dit le méde-

[Text]

hood, unless, as the doctor suggested, there were elaborate clinical safeguards for the child. So it appears to me that we have left a gap there between the 26th week and the act of birth. I think if the judicial interpretation of "miscarriage of a female person" extends beyond the 26th week, perhaps we do not have to worry about it too much but if it is going to be left to medical testimony as to what the miscarriage of a female person is, we might be in serious difficulties leaving that gap. Perhaps they could look that up and let us know next week.

• 1555

The Chairman: Mr. Scollin, do you appreciate the point brought up by Mr. Hogarth?

Mr. John A. Scollin, Q.C., (Director, Criminal Law Section, Department of Justice): I appreciate the point. I will have something on that for next week's meeting.

The Chairman: Thank you very much, Mr. Scollin. Mr. McQuaid.

Mr. McQuaid: Have you any idea when some of the proceedings of the Committee will be printed so that we will have them? Is there any report on the progress being made?

The Clerk (Mr. Virr): Number 10, that is for March 13, is not out yet but should be out soon. It went to the printers two days ago. It should be out tomorrow, I would think. Tuesday's meeting has not gone to the printers yet.

The Chairman: Gentlemen, if you will turn to page 87, Clause 76. We have a quorum now. Shall Clause 76 carry?

Mr. MacGuigan: Mr. Chairman, what is the effect of this change?

The Chairman: Mr. Scollin, please.

Mr. Scollin: The object and the effect of the change is to remove from the ambit of the definition of "dangerous sexual offender" cases such as *Regina v. Klippert* where, on the facts that were before the court, the Supreme Court of Canada dismissed the appeal against the finding that the accused was a dangerous sexual offender. In that case there was no evidence before the court that the accused was a person who was likely to cause injury, pain or other evil to any person through failure in the future to control his sexual impulses, but there was evidence

[Interpretation]

cin, que des mesures préventives soient utilisées pour conserver la vie de l'enfant. Il y a donc du décalage entre la 26^e semaine et la naissance. Si on donnait la définition de l'avortement «passé la 26^e semaine» cela ne nous préoccuperait pas trop, mais si nous laissons cet écart, dans la définition, les conséquences seraient peut-être assez graves; les conseillers pourraient-ils se renseigner pour nous éclairer la semaine prochaine?

Le président: Monsieur Scollin, comprenez-vous ce qu'a dit M. Hogarth?

M. John A. Scollin, Q.C. (Directeur de la section du droit criminel au ministère de la Justice): Oui, je comprends; nous essaierons de trouver quelque chose là-dessus pour la réunion de la semaine prochaine.

Le président: Merci, monsieur Scollin. Monsieur McQuaid.

M. McQuaid: Quand les comptes rendus des comités seront-ils imprimés de façon que nous puissions nous y référer?

Le greffier (M. Virr): Le numéro 10 n'a pas encore été publié. On l'a expédié chez l'imprimeur il y a 2 jours; cela devrait arriver demain. La réunion de mardi n'a pas été envoyée chez l'imprimeur.

Le président: Messieurs, si vous voulez maintenant regarder la page 87, l'article 76. Nous avons maintenant un quorum. L'article 76 est-il adopté?

M. MacGuigan: Où est le changement, Monsieur le président?

Le président: Monsieur Scollin, s'il vous plaît.

M. Scollin: Le but et l'effet du changement est de faire disparaître de la définition de «délinquant sexuel dangereux» les cas comme ceux de l'affaire *Klippert*. La Cour suprême du Canada a rejeté l'appel. Il avait été jugé de «délinquant sexuel dangereux». Mais dans l'affaire en question, rien ne prouvait que l'accusé était une personne qui pouvait remplir ces conditions qui causera vraisemblablement une lésion corporelle, une douleur ou un autre mal à quelqu'un, parce qu'il ne pouvait pas maîtriser ses instincts sexuels. Mais toutefois, le tribunal aurait pu juger légitimement

[Texte]

before the court on which it was entitled to find that he was likely to commit a further sexual offence.

The minority judgment of the Supreme Court of Canada delivered by Mr. Chief Justice Cartwright gave these last nine words the meaning that "is likely to commit a further sexual offence involving an element of danger to another person." The majority of the judges, however, took the plain ordinary meaning of the words and held that Klippert, notwithstanding that he was not a danger in the sense defined in the first part, was likely to commit a further sexual offence and was therefore a dangerous sexual offender. The object of this removal of the last nine words is to remove from the ambit of the definition cases such as that.

Mr. MacGuigan: I was hoping that was the case and I certainly strongly support this change.

Clauses 76 to 78 inclusive agreed to.

The Chairman: Shall Clause 79 carry?

Mr. Hogarth: I think the effect of this would prevent the habitual criminal proceedings from going ahead until such time as the accused was before the court, either voluntarily or because he is in prison or by virtue of a warrant or summons.

Mr. Scollin: That is so. The amendments in Clauses 78 and 79 are related. That is the effect, Mr. Hogarth.

Clauses 79 to 83 inclusive agreed to.

• 1600

The Chairman: Shall Clause 84 on page 90 carry?

Clause 84 agreed to.

On Clause 85...

The Chairman: Shall Clause 85 carry?

Mr. Hogarth: Is this Clause 85, proposed Section 721 (1), (2) and (3)?

The Chairman: Yes.

Mr. Hogarth: I would like to comment on proposed Section 721 (3). Mr. Chairman, surely that would be inherent in the court. Subsection (3) reads:

In the Province of British Columbia an appeal under section 720 shall be heard at the sittings...

This permits a change of venue. Is that not so?

[Interprétation]

qu'il était apte à commettre un autre délit sexuel.

Le jugement minoritaire de la Cour suprême du Canada, du juge Cartright, donnait à ces derniers mots le sens suivant: «qui causera vraisemblablement une lésion corporelle, une douleur ou un autre mal à quelqu'un».

Toutefois, la majorité des juges ont interprété ces mots dans le sens ordinaire: Klippert, même s'il ne représentait pas un danger risquait fort de commettre un autre délit sexuel et était donc un délinquant sexuel dangereux. Il s'agit donc de faire disparaître de la définition des cas comme celui-là en enlevant les 9 derniers mots.

M. MacGuigan: J'espérais bien que ce fut le cas et j'appuie très volontiers ce changement.

Les articles de 76 à 78 sont adoptés?

Le président: L'article 79 est-il adopté?

M. Hogarth: Il s'agirait donc d'empêcher les audiences en ce qui concerne les affaires d'habitude criminelle de se faire en l'absence de l'accusé, parce qu'il est en prison ou autrement.

M. Scollin: C'est cela, en effet.

Les articles 79 à 83 sont adoptés.

Le président: L'article 84, à la page 90, est-il adopté?

L'article 84 est adopté.

Article 85.

Le président: Est-ce que l'article 85 sera adopté?

M. Hogarth: S'agit-il de l'article 85 du bill, relatif aux paragraphes (1), (2) et (3) de l'article 721 de la Loi?

Le président: Oui.

M. Hogarth: Un mot au sujet du paragraphe (3). Monsieur le président, est-ce que ce ne serait pas inhérent aux opérations du tribunal lui-même. Le paragraphe (3) se lit:

(3) Dans la province de Colombie-Britannique, un appel prévu par l'article 720 doit être entendu à la session...

Il s'agit ici d'un changement de lieu, n'est-ce pas?

[Text]

Mr. Scollin: I suppose it might be argued that the judge may order it, and there is no restriction on the grounds on which he can do so.

Mr. Hogarth: I see.

Clause 85 agreed to.

On Clause 86—Notice of appeal.

The Chairman: Mr. Deakon.

Mr. Deakon: Mr. Chairman, I have an amendment to propose to this clause in reference to lines 29, 30 and 31, to make it easier for the appellant to commence his appeal. I respectfully submit the following amendment.

I move that Bill C-150 be amended by striking out lines 29, 30 and 31 on page 91 and substituting the following: "or the sentence appealed against;" In other words, the grounds of appeal would be removed.

Monsieur Cantin donne lecture de l'amendement en français.

The Chairman: Shall the amendment proposed by Mr. Deakon carry? Mr. Hogarth.

Mr. Hogarth: Why are we taking that out of a notice of appeal, Mr. Scollin? I recognize that nobody pays any attention to them, but...

Mr. Scollin: This is why in fact it has become such a formality. It is meaningless to set out grounds effectively and it is in fact a full, fresh trial *de novo*. It is often felt, rather than get into the technicalities of setting out specific grounds, that it would be better just to say in fact that this is almost an absolute right of appeal and give it to the chap on this basis.

Mr. Hogarth: Mr. Chairman, in commenting on that—and I appreciate why it is deleted—I would like to say, and I am going to be very brief and I am certainly supported by other lawyers who have utilized this summary conviction appeal procedure, that I think the initial process in summary conviction appeals is absolutely absurd.

• 1605

It is easier to appeal a capital murder case than it is to appeal a traffic ticket on summary conviction proceedings. I think the two processes of appeal as between the indictable appeals and the summary conviction appeals should be identical. All a person should have to do, if they wish to appeal their summary conviction appeal, is file three copies of the notice of appeal with the clerk of the appeal court and from then on the appeal is

[Interpretation]

M. Scollin: Je suppose qu'on peut prétendre que le juge puisse le demander; il n'y a aucune restriction aux raisons de son action.

M. Hogarth: Je vois.

L'article 85 est adopté.

Article 86—Avis d'appel.

Le président: Monsieur Deakon.

M. Deakon: J'ai un amendement à proposer, monsieur le président. Il s'agit des lignes 29, 30 et 31. Il s'agit de faciliter la tâche de l'appelant en ce qui concerne l'introduction de son appel.

Je propose que le bill C-150 soit modifié par le retranchement des lignes 30 et 31, à la page 91, et leur remplacement par ce qui suit: «—tence dont est appel;». Autrement dit, il ne sera plus question de parler de motif d'appel.

Mr. Cantin reads the amendment in French.

Le président: L'amendement de M. Deakon est-il adopté? Monsieur Hogarth.

M. Hogarth: Pourquoi enlevons-nous cela de l'avis d'appel, monsieur Scollin? Je reconnais que personne ne s'en occupe.

M. Scollin: C'est pourquoi il est devenu une pure formalité d'établir efficacement les raisons. Il s'agit donc d'un nouveau procès purement et simplement. Plutôt que d'entrer dans des formalités, plutôt que de parler de motifs, on devrait simplement ici prévoir un droit d'appel pur et simple.

M. Hogarth: Je vois les raisons pourquoi on a retranché ces mots. Je vais être bref et j'ai certainement l'avis d'autres avocats qui ont utilisé la procédure d'appel en matière de condamnation sur déclaration sommaire de culpabilité. Je trouve que la procédure actuelle est absurde.

Il est beaucoup plus facile de faire appel en matière de condamnation pour meurtre que de faire appel en ce qui concerne une condamnation pour contravention aux lois de la circulation. Je crois que le droit d'appel devrait être le même dans les deux cas. Une personne qui voudrait faire appel ne devrait avoir qu'à présenter trois copies de son avis auprès du greffe de la cour d'appel, après quoi l'appel sera en route, à la condition évi-

[Texte]

launched, provided it is within the time provided by the rules of court.

I would invite the Department of Justice—not necessarily in this bill because we have enough in this bill now—to review the whole process of summary conviction appeals with a view to simplifying them and to abolish the recognizances and all these jurisdictional problems that come up so that people do not necessarily have to hire counsel to appeal a traffic ticket.

Believe me, any layman who can get through the summary conviction appeal procedures with accuracy is doing an awful lot better than about 90 per cent of the lawyers who try it, no matter how long they have been in the business. I think time and time again the prosecution in a summary conviction appeal takes the position that the court has no jurisdiction.

It is always on some technicality and very often in the first instance the grounds of appeal are very sound. I certainly invite the department's review of these provisions.

Mr. Scollin: I agree that general approach is sound, Mr. Hogarth. What Bill C-150, in regard to summary conviction appeals, tries to do here is to remove at least some of the impediments in regard to what has to be filed, when it has to be filed, what is to be set out in it and the question of extension of time, which we will come to later.

Amendment agreed to.

Clause 86 as amended agreed to.

Clause 87 agreed to.

On Clause 88—Notification and transmission of conviction, et cetera.

Mr. Hogarth: I take it, Mr. Chairman, dealing with Clause 88, Section 726, subsection (3), that there is no compulsion upon the appellant to provide the appeal court with a transcript unless the prosecutor or the opposing side makes a specific application to the court to get the transcript. Is that correct?

Mr. Scollin: That is correct. It reverses the present position.

Mr. Hogarth: Thank you.

Clause 88 agreed to.

Clause 89 agreed to.

Clause 90 agreed to.

Clause 91 agreed to.

[Interprétation]

demment que cela soit fait dans les délais prescrits.

J'invite donc le ministre de la Justice, non pas seulement dans ce bill-ci, car Dieu sait s'il y a assez de choses dans ce bill-ci, à revoir toute la procédure des appels en matière de condamnation sur déclaration sommaire de culpabilité, afin de les simplifier et d'abolir les questions de reconnaissance et tous ces problèmes de juridiction, de façon qu'il ne faille pas nécessairement en appeler à un avocat pour faire appel d'une condamnation pour infraction aux lois de la circulation.

Croyez-moi, tout profane qui peut passer au travers des procédures pour appels en matière de condamnation sur déclaration sommaire de culpabilité sans se tromper fait beaucoup mieux qu'environ 90 p. 100 des avocats qui ont essayé, peu importe le nombre d'années dans le métier. Il arrive maintes et maintes fois que la poursuite, en cas d'appel en matière de condamnation sommaire, adopte la position que la cour n'a pas de juridiction.

C'est toujours sur un point de détail et très souvent les motifs d'appel en première instance sont extrêmement sûrs. J'invite donc le ministre de la Justice à s'en occuper.

M. Scollin: C'est certainement un point de vue parfaitement défendable, monsieur Hogarth. Le bill C-150 en ce qui concerne les appels en matière de condamnation pour motifs sur déclaration sommaire de culpabilité veut faire disparaître certains obstacles en ce qui concerne les modalités de dépôts des demandes d'appel, les délais d'appel, que nous verrons plus tard.

L'amendement est adopté.

L'article 86 modifié est adopté.

L'article 87 est adopté.

Article 88.—Avis et transmission de la déclaration de culpabilité, etc.

M. Hogarth: J'en conclus donc, monsieur le président, qu'en ce qui concerne l'article 88, relatif au paragraphe (3) de l'article 726 du Code, que rien n'oblige l'appelant à fournir la transcription à la cour d'appel à moins que la poursuite ou la partie adverse présente une demande en bonne et due forme en ce sens. Est-ce correct?

M. Scollin: C'est précisément le cas. Cela renverse la position actuelle.

M. Hogarth: Merci.

L'article 88 est adopté.

L'article 89 est adopté.

L'article 90 est adopté.

L'article 91 est adopté.

[Text]

On Clause 92—References in *Criminal Code* to *prima facie* evidence.

Mr. Hogarth: This was referred to, Mr. Chairman, during the course of the evidence in our earlier hearings. I take it that the effect of this clause is to remove the phrase *prima facie* wherever it appears. However, I take it from the Department's point of view, because of the operation of the Interpretation Act, that what we have substituted therefor is identical in so far as the methods of proof are concerned.

Mr. Scollin: In so far as subsection (1) is concerned, that is true because all of the provisions referred to in paragraphs (a) to (e) of subsection (1) are documentary matters, and it is a straight reference to Section 24, subsection (1), of the Interpretation Act. As far as subsection (2) is concerned, the formulation for *prima facie* evidence is a drafting matter and it will have to follow this form. However, the intent is to do the same as in subsection (1). Where Section 24, subsection (1), of the Interpretation Act sets out the formula or gives the meaning of what has been called *prima facie* evidence up to now, subsection (2) does this in cases where "acts" are referred to rather than "documents".

• 1610

Mr. Hogarth: Just to particularize that, let us look at subsection (e), the certificate under Section 676, subsection (3), so there will be no mistake. This is with respect to the endorsement of a Form 29 upon the estreatment of bail. It now provides:

A certificate that has been endorsed on a recognizance pursuant to subsection (1) is *prima facie* evidence of the default to which it relates.

Mr. Scollin: That is so.

Mr. Hogarth: My concern is that I take it that evidence could still be called to the effect that the default had not taken place?

Mr. Scollin: Yes.

Clause 92 agreed to.

On Clause 93...

Mr. Hogarth: Mr. Chairman, Mr. MacGuigan took up the point during our discussions on firearms, as set out in proposed Section 98H, at the bottom of page 23:

(2) Where any firearms registration certificate or any permit in Form 42, 43, 44 or 45 or to the like or any similar effect was issued before the coming into force

[Interpretation]

Article 92—Mentions de la preuve *prima facie* dans le *Code criminel*.

M. Hogarth: Il s'agit de causes que nous avons déjà entendues à nos premières audiences. Je suppose que cet article a pour effet de faire disparaître l'expression «*prima facie*» partout où elle pouvait figurer. Du point de vue du ministère, à cause de la *Loi d'interprétation*, nous avons remplacé «*prima facie*» par des mots qui veulent dire exactement la même chose, en ce qui concerne les méthodes de preuve.

M. Scollin: En ce qui concerne le paragraphe (1), oui. Toutes ces dispositions mentionnées dans les alinéas a) à e) du paragraphe (1) ont trait à des documents. Il s'agit d'appliquer le paragraphe (1) de l'article 24 de la *Loi sur l'interprétation*. En ce qui concerne le paragraphe (2), la formulation de la preuve *prima facie* est une question de rédaction et devra suivre cette forme. Toutefois, l'intention est de faire la même chose que l'alinéa (1). Lorsque le paragraphe (1) de l'article 24 de la *Loi d'interprétation* décrit la formule ou donne la définition de ce qu'on a appelé preuve «*prima facie*» jusqu'ici, l'alinéa (2) le fait dans les cas où il s'agit d'«*actes*» au lieu de «*documents*».

M. Hogarth: Par exemple, voyons le paragraphe e), le certificat en vertu du paragraphe (3) de l'article 676, afin qu'il n'y ait pas d'erreur. Il s'agit de l'approbation d'une Formule 29 ou il s'agit de cautionnement.

676. (3) Un certificat inscrit au verso d'un engagement en conformité du paragraphe (1) constitue une preuve *prima facie* du manquement auquel il se rapporte.

M. Scollin: Sans doute.

M. Hogarth: Néanmoins, on pourrait toujours invoquer des témoignages pour prouver que le défaut n'a pas eu lieu?

M. Scollin: Oui.

L'article 92 est adopté.

Article 93.

M. Hogarth: Monsieur le président, lorsque M. MacGuigan a invoqué ce point lors de la discussion sur les armes à feu, en ce qui concerne l'article 98H, page 23, au bas de la page:

(2) Lorsqu'un certificat d'enregistrement d'armes à feu ou un permis selon la formule 42, 43, 44 ou 45 ou qui a le même effet ou un effet similaire a été émis

[Texte]

of this section under the authority of the Criminal Code...

Those were the former forms dealing with firearms?

Mr. Scollin: Yes.

Mr. Hogarth: And we have repealed those forms?

Mr. Scollin: Yes.

Mr. Hogarth: And now Form 42 is a fingerprint form?

Mr. Scollin: Yes.

Mr. Hogarth: Having repealed the forms as Mr. MacGuigan pointed out, how could we give them legal effect? I thought the observation made on this by Mr. McMorran was wrong, but now that I look at it on reflection I think it might be right.

Mr. Scollin: The object of subclause (2) of Clause 6 is, in fact, to preserve these forms in their transitional period.

Mr. Hogarth: Unfortunately, they are forms that no longer exist. The form is now a fingerprint form and those forms have been completely voided. They are no longer forms.

Mr. Scollin: They are recognized under subclause (2) of Clause 6.

Mr. Hogarth: Yes?

Mr. Scollin: It says that where a firearm registration certificate or any permit in this Form—that is, an actually existing, presently outstanding permit or registration certificate—was issued before the coming into force of this act, then it is deemed for all purposes to be issued under Sections 97 and 98. But these Forms 42, 43, 44 and 45 will, as they expire, become obsolete.

Mr. Hogarth: I appreciate that. I think you have missed Mr. McMorran's point. There are no firearms registration certificates issued on Forms 42, 43, 44 or 45.

Mr. Scollin: No; there will not be, after the act comes into force.

Mr. Hogarth: No, but subclause (2) reads in the present tense.

Where any firearms registration certificate or any permit in Form 42, 43, 44 or 45 or to the like or any similar effect was

[Interprétation]

avant l'entrée en vigueur du présent article sous l'autorité du *Code criminel*...

Il s'agit des anciennes formules relatives aux armes à feu?

M. Scollin: Oui.

M. Hogarth: Nous avons rejeté ces nouvelles formules?

M. Scollin: Oui.

M. Hogarth: Maintenant, la nouvelle formule 42 a trait, je pense, aux empreintes digitales?

M. Scollin: Oui.

M. Hogarth: Ayant rejeté donc ces anciennes formules, comment pouvons-nous leur donner un effet juridique. Je pensais que M. MacGuigan avait tort, mais à la réflexion, je pense qu'il avait raison.

M. Scollin: Le but du paragraphe (2) de l'article 6 est de conserver ces formules, pendant une période de transition.

M. Hogarth: Malheureusement, ces formules n'existent pas. La formule maintenant est une formule d'empreinte digitale et ces formules ne valent plus. Elles sont désormais nulles.

M. Scollin: Elles sont pourtant reconnues aux termes du paragraphe (2) de l'article 6.

M. Hogarth: Oui.

M. Scollin: On dit que là où un certificat d'immatriculation d'armes à feu ou un permis est livré sous cette forme, il s'agit donc d'un permis valable, délivré avant l'entrée en vigueur de la loi, il sera censé à toutes fins avoir été délivré aux termes des articles 97 et 98. Mais ces formules, comme 42, 43, 44 et 45, au fur et à mesure qu'elles expireront, deviendront désuètes.

M. Hogarth: J'apprécie cela. Je crois que vous n'avez pas compris ce que voulait dire M. McMorran. Il n'y a plus de certificats d'armes à feu délivrés en ce qui concerne les formules 42, 43, 44 ou 45.

M. Scollin: Non, c'est qu'il n'y en aura plus après l'entrée en vigueur de la loi.

M. Hogarth: Non, mais le paragraphe (2) parle au présent,

Lorsqu'un certificat d'enregistrement d'armes à feu ou un permis selon la formule 42, 43, 44 ou 45 ou qui a le même

[Text]

issued before the coming into force of this section...

—indicating that there are firearms forms. But those forms no longer exist, because we have repealed that section, and the forms now are fingerprint forms. Surely it would be better, if I may suggest in retrospect, to say, "Where any legal authorization pursuant to any provisions of this act..."—then they shall continue in effect, without referring to forms that have been repealed.

Mr. Scollin: I really do not see either a legal or a philosophical difficulty in saying that if you have a piece of paper, on the top of which is written "Form 42," it does not

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matter whether it is an existing form in the Criminal Code, or where it comes from. It is a statutory recognition that it continues in effect. I do not think anybody is going to be confused between a fingerprint form and a firearms registration form.

Mr. Hogarth: All right; I will raise the point.

Clause 93 agreed to.

Mr. Peters: For information, in relation to this last decision, does that mean that everyone has to re-register all the guns they now have under the new fingerprint registration?

Mr. Scollin: As the forms and permits expire.

Mr. Peters: They do not expire for registration.

Mr. Scollin: Unless the person is one of the unlucky ones whom the Commissioner reports to the Board then his registration will stay good.

Mr. Hogarth: Has the Commissioner power to revoke the former forms?

Proposed Section 98A (1) states:

A permit may be revoked by any person who is authorized to issue such a permit.

He is only authorized to revoke the permits he has issued pursuant to the provisions of this statute as it now is.

Mr. Scollin: The effect of subclause (2) of Clause 6 is that the presently-issued registration and the presently-issued forms are deemed to have been issued under Sections 97 and 98 of this act. Therefore, having been so deemed to be issued they fall within all

[Interpretation]

effet ou un effet similaire a été émis avant l'entrée en vigueur du présent article...

Cela indique qu'il existe des formules. Or, ces formules n'existent plus, parce que, nous venons de rapporter cet article, et les formules en question sont simplement des fiches avec empreintes digitales. Il faudrait mieux en rétrospective ne parler désormais d'autorisation légale conformément aux articles de la loi, ce serait une expression générale plus commode, il vaudrait mieux que de parler de formules qui n'existent plus.

M. Scollin: Je ne vois pas de difficulté juridique ou philosophique en disant que s'il y a un bout de papier dont l'entête dit «formule 42», il importe peu qu'il s'agisse d'une exis-

tante dans le Code ou ailleurs. C'est une reconnaissance statutaire qu'elle demeure en vigueur. Je pense que personne ne pourra confondre une fiche avec empreintes digitales et un certificat de permis d'armes à feu.

M. Hogarth: Bon, alors, parfait, j'ai fait valoir mon objection.

L'article 93 est adopté.

M. Peters: Est-ce que cela veut dire que tout le monde doit immatriculer de nouveau les armes à feu que l'on possède en vertu du nouvel enregistrement des empreintes digitales?

M. Scollin: A mesure que les formules et les permis expirent.

M. Peters: Ils n'expirent pas avant l'enregistrement.

M. Scollin: A moins que la chance fasse qu'une personne soit reportée à la Commission par le commissaire, son enregistrement demeurera en vigueur.

M. Hogarth: Est-ce que le commissaire est habilité à révoquer les anciennes formules?

L'article 98A proposé dit:

Un permis peut être révoqué par toute personne autorisée à émettre un tel permis.

Mais il ne peut révoquer les permis qu'aux termes des dispositions de cette loi sous sa forme actuelle.

M. Scollin: L'effet du paragraphe (2) de l'article 6 est que les immatriculation actuellement en vigueur et les formules actuellement en vigueur sont censées avoir été délivrées aux termes de la présente loi, aux termes des articles 97 et 98, et, en conséquence,

[Texte]

the terms of Sections 97 and 98, including, for example, 98A (1).

Mr. Hogarth: I see your point; thank you.

The Chairman: Shall we turn to clause 116 on page 123? The intervening clauses pertain to the jurisdiction of the Solicitor General. We thought we would wait for his presence next Tuesday.

On Clause 116—Part V—Combines Investigation Act.

Mr. Gilbert: I understood we were going to have the Minister of Consumer and Corporate Affairs here to explain the background and the purpose of the section.

The Chairman: This was also my impression, but it may be that Mr. Scollin can actually explain it to our satisfaction. If not, we will have to stand it.

Mr. Cantin: If it is your feeling that we should wait until the Minister is present we can stand it until next week.

An hon. Member: I think that might be better, Mr. Chairman.

The Chairman: I think it could be dealt with. If there are questions that cannot be answered, of course, we will have to stand it.

Mr. Deakon: Mr. Chairman, may I ask the witness if he has any knowledge of the number of prosecutions that have been carried out under this section, say, last year?

Mr. Scollin: I have no direct knowledge of the number of prosecutions. All I can say is that, going back for years, there are no reported cases under Section 306. One of the objects and aims of replacing Section 306 as 33D in the Combines Investigation Act is to put at the disposal of the enforcement authorities the machinery of the Combines Investigation Act. This is one of the reasons. But there has, in fact, been no act of prosecution under 306 at all.

Mr. Deakon: Thank you.

Mr. Gilbert: This brings up the necessity of having the Minister here to give us the background to this particular new section and what he proposes to do to enforce it.

[Interprétation]

ayant été délivrées dans ces conditions, elles satisfont à toutes les dispositions de 97 et 98, 98A (1).

M. Hogarth: Je comprends, merci.

Le président: Est-ce que nous pourrions sauter à la page 123, à l'article 116. Les autres dispositions ont trait aux clauses qui relèvent du solliciteur général qui sera avec nous mardi.

Sur l'article 116—Partie V—Loi relative aux enquêtes sur les coalitions.

M. Gilbert: Je pensais que le ministre de la Consommation et des Corporations serait ici avec nous pour expliquer de quoi il s'agit ici.

Le président: C'est l'impression que j'avais, peut-être. M. Scollin peut-il nous satisfaire. Sinon, nous devons réserver l'article.

M. Cantin: Si vous voulez attendre que le ministre vienne, nous pouvons réserver l'article.

Une voix: Cela ne suscite pas d'inconvénient, monsieur le président.

Le président: On peut l'examiner s'il y a des demandes auxquelles on ne peut pas répondre, il faudra, naturellement, réserver l'article.

M. Deakon: Monsieur le président, est-ce que je peux poser cette question au témoin. Sait-il s'il n'y a jamais eu des poursuites aux termes de cet article, l'an dernier?

M. Scollin: Je ne sais pas exactement combien il a pu y avoir de poursuites. Tout ce que je peux dire, c'est qu'il n'y a pas encore de cas dont il est fait rapport. Il n'y en a pas eu en tout cas depuis des années en ce qui concerne l'application de l'article 306. L'un des buts du remplacement de l'article 306 en tant que 33D dans la Loi relative aux enquêtes sur les coalitions, c'est de mettre à la disposition de l'autorité compétente des moyens d'administration dont disposent ceux qui sont chargés d'appliquer la Loi relative aux enquêtes sur les coalitions. C'est une des raisons. Mais, en fait, il n'y a pas eu de poursuites aux termes de l'article 306.

M. Deakon: Merci.

M. Gilbert: Il aurait été bon, peut-être, que le ministre soit ici pour nous expliquer l'origine de ce nouvel article.

[Text]

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The Chairman: What is the feeling of the Committee about this?

An hon. Member: "Duz" will no longer do everything under this clause. I can see the advertising business...

The Chairman: Has the Committee any expression of opinion on the desirability of having Mr. Basford here?

Mr. McQuaid: Mr. Gilbert, do you have some specific questions you wish to direct to him? As the Chairman has said, perhaps Mr. Scollin could explain everything to our satisfaction, unless you have some specific matter you would like to raise.

Mr. Gilbert: I am sure Mr. Scollin is not, and should not be, required to have the background with regard to the philosophy behind this particular section. As he said, what we are doing is transferring the old Section 306 from the Code to the Combines Investigation Act. There is a policy behind this, Mr. Chairman, and I would like to hear the Minister of Consumer and Corporate Affairs give us the background material.

Mr. Scollin: Perhaps I could indicate one thing to you if it would be of any assistance at the moment. This will, in the ordinary course of events, if it is transferred be a section which would be enforced at the request of Mr. Basford's Department by the Department of Justice in the same way as we presently enforce Section 33C of the Combines Investigation Act, which deals with materially misleading representations as to the price of articles. Section 33C is a summary conviction offence only, and the materially misleading representations are restricted to representations dealing with the price of articles.

Section 306, if passed, will become 33D, and as you see this is a very broad section dealing with misleading endorsements, not only in relation to price, but in relation to quality and in fact to any aspect which is designed to promote the sale or the disposal of the article. It is, at the moment, as far as Section 33D (1) is concerned, an indictable offence as compared with Section 33C of the Combines Investigation Act which provides for summary conviction.

Mr. Valade: Would Mr. Scollin explain if this section means that any publication, such as a newspaper for instance, would be responsible for that is published in it in that context?

[Interpretation]

Le président: Quel est le sentiment du Comité à ce sujet?

Une voix: «Duz» ne pourra pas, désormais, faire tout aux termes de cet article. Je peux voir que les entreprises de publicité...

Le président: Quel est l'avis du Comité, est-ce qu'il serait bon d'avoir M. Basford avec nous?

M. McQuaid: M. Gilbert a-t-il des questions précises à lui poser? Peut-être M. Scollin pourrait-il nous donner des explications suffisantes.

M. Gilbert: Je suis sûr que M. Scollin n'est pas censé connaître la doctrine qui est en cause ici. Comme il l'a dit il s'agit de transférer l'ancien article 306 à la Loi relative aux enquêtes sur les coalitions. Il y a certainement là une doctrine derrière cela, et j'aimerais entendre le ministre des Affaires du consommateur nous dire quelle est l'origine de cette initiative?

M. Scollin: Peut-être pourrais-je vous indiquer une chose qui pourrait vous être utile. Il s'agira, dans les cas normaux, s'il est transféré, d'un article qui sera appliqué par le ministre de la Justice sur la demande du ministère de M. Basford, exactement comme on le fait actuellement en ce que nous dit l'article 33C de la Loi relative aux enquêtes sur les coalitions, en ce qui concerne la publicité mensongère ou les prix. L'article 33C constitue un délit punissable sur déclaration sommaire de culpabilité et les publicités mensongères sont restreintes aux publicités visant le prix des articles.

L'article 306, qui deviendra 33D s'il est accepté, est un article très large qui traite de publicité mensongère non seulement en ce qui concerne le prix mais en ce qui concerne la qualité et en fait tous les aspects qui visent à promouvoir la vente de l'article. A l'heure actuelle, l'article 33D (1) définit cela comme un délit punissable alors que l'article 33C de la Loi relative aux enquêtes sur les coalitions le définit comme un délit punissable sur déclaration sommaire de culpabilité.

M. Valade: Est-ce que M. Scollin pourrait expliquer si toutes les publications, telles que les journaux, seraient tenues responsables de ce qu'elles publient?

[Texte]

Mr. Scollin: No. Subsection (3) is an exempting section which is similar to the present Subsection (2) of Section 33C of the Combines Investigation Act, which provides that neither the indictable offence set out under Subsection (1) nor the summary conviction offence set out in Subsection (2) are committed by:

... a person who publishes an advertisement that he accepts in good faith for publication in the ordinary course of his business.

Perhaps I might just add that up to now any enforcement that did take place was the responsibility of the provincial authorities under the Code, whereas now this would be enforced by the federal government.

Mr. Valade: But they still could be prosecuted and then they would have to prove their good faith. Would this not be the case?

Mr. Scollin: If a newspaper were prosecuted, they would probably have to establish something to show that they really did not know what was happening, because under Subsection (2) the mere publishing or causing to be published in an advertisement a statement of guarantee of the adequacy of a thing, the proof of which is on the accused, just to satisfy those burdens alone would, I think, effectively mean that if a newspaper were prosecuted, they would have to show that it was taken in good faith. It might not be a very heavy burden in the normal course of events.

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Mr. Valade: This is why I asked the question. I am now talking as a layman, but would it not be preferable to have some kind of provision that a newspaper or any other publication, if they proved their good faith before, would not have to make this proof in the tribunals? That is what I am trying to make clear.

Mr. Scollin: I think you can depend on it that proceedings of this sort would not, in fact, be instituted in those circumstances, for example, in the course of enforcing Section 33C of the Combines Investigation Act, which contains the same qualification in Subsection (2). That is, it

... does not apply to a person who publishes an advertisement that he accepts in good faith for publication in the ordinary course of his business.

I know of no case where any proceedings have been instituted against any publication,

[Interprétation]

M. Scollin: Non. Le paragraphe 3 comporte une exemption analogue à celle du paragraphe (2) de l'article 33C de la Loi relative aux enquêtes sur les coalitions, qui prévoit que ni le délit punissable de l'article (1) ne le délit punissable sur déclaration sommaire de culpabilité de l'article (2) ne sont commis par...

... une personne qui fait paraître une annonce publicitaire qu'elle accepte de bonne foi en vue de la publication dans le cours ordinaire de son entreprise.

Je dois dire ici que jusqu'ici l'application de ces dispositions a été le fait des provinces en vertu du Code, désormais, elle relèvera du Gouvernement fédéral.

M. Valade: Mais une personne poursuivie devra toujours prouver sa bonne foi?

M. Scollin: Si on poursuivait un journal, il faudrait probablement que le journal démontre qu'il ne savait pas ce qui se passait. En effet, aux termes du paragraphe (2) la simple publication d'une annonce garantissant quelque chose oblige le journal à s'assurer que la garantie est fondée, faute de quoi il lui appartient, s'il est poursuivi, de faire la preuve de sa bonne foi. Normalement la preuve ce ne serait pas tellement difficile à fournir.

M. Valade: C'est pourquoi je posais la question. Je parle ici en profane mais ne serait-il pas préférable d'avoir certaines dispositions aux fins qu'un journal ou toute autre publication, s'ils font preuve de leur bonne foi, n'aient pas à refaire cette preuve devant les tribunaux? C'est ce que j'essaie d'éclaircir.

M. Scollin: Je crois que vous pouvez prendre pour acquis que de telles procédures ne pourraient pas être instituées dans des circonstances semblables. Par exemple, selon l'article 33(c) de la Loi sur les coalitions qui contient les mêmes réserves pour le paragraphe 2:

... elle ne s'applique pas à une personne qui fait paraître une annonce publicitaire qu'elle accepte de bonne foi en vue de la publication dans le cours ordinaire de son entreprise.

Je ne connais aucun cas où des actions ont été prises en justice vis-à-vis d'une publica-

[Text]

because in the course of the actual inquiries it is quite evident, generally speaking, that this is what has happened. The person is in good faith. Someone has come along with an advertisement which he has no means of checking; he accepts it and puts it in his newspaper. I would think that one need not worry much about that, because in the ordinary course of inquiry facts come out that would show any fair-minded prosecutor that there is no point in prosecuting.

Mr. McQuaid: Mr. Scollin, would not the ordinary rules of proof apply? I mean, would not the Crown or whoever brings the prosecution first have to show some evidence of bad faith.

Mr. Scollin: Of bad faith. I think this is a practical matter, and this would probably happen, that there would be a very thin case to answer if in the course of the Crown evidence there was nothing to show that this newspaper or periodical really knew that this was a false advertisement. Again, as a practical matter, I do not think a prosecutor would even recommend a charge unless he really felt he had some good solid evidence to show they were blameworthy.

Mr. Hogarth: I was very interested in a point that was made during the course of this evidence. Is it your suggestion that by removal of Section 306 from the Criminal Code and putting it in the Combines Investigation Act, prosecutions under Section 306, should they proceed, will only proceed at the instigation of the Attorney General of Canada?

Mr. Scollin: This was not my suggestion, any more than I would suggest that under the Combines Investigation Act the provincial authorities could not proceed. But what it will do is give the Attorney General of Canada the right to proceed, which he does not have at the moment under the Code since the thing is accorded to the Attorney General of the province.

Mr. Hogarth: No, but let us consider by way of analogy the Narcotic Control Act. As I understand the law, and you can correct me if I am wrong and I am referring to the McGavin Bakeries case, any person may instigate proceedings under any statute in Canada, whether it is a federal statute or a provincial statute. Therefore, the Attorney

[Interpretation]

tion quelconque. Car il est évident qu'au cours des enquêtes actuelles, c'est généralement ce qui arrive. La personne est de bonne foi. Quelqu'un est venu avec une annonce aux fins de publication, l'éditeur l'accepte, il n'a aucun moyen de vérifier, et l'introduit dans son journal. Je pense que cette personne-là n'a pas besoin de s'inquiéter car dans la pratique générale d'une enquête, les faits découverts démontrent à tout procureur de la Couronne un peu intelligent qu'il n'y a aucune matière à procédure.

M. McQuaid: Monsieur Scollin, la règle ordinaire de la preuve s'applique-t-elle? Je veux dire par là, la Couronne ne doit-elle pas, lorsqu'elle intente des procédures, démontrer avant tout la preuve de la mauvaise foi.

M. Scollin: De la mauvaise foi. Je pense que c'est une chose normale, et qu'une telle chose doit arriver. Je pense qu'il y aurait peu ou très petite matière à procédure si la Couronne, dans sa preuve, n'a rien d'autre à montrer que ce journal ou ce périodique en faisant croire qu'il y a là une annonce fallacieuse. Encore une fois, je crois que dans la pratique courante un procureur de la Couronne ne demandera même pas à procéder contre le journal s'il n'a pas réellement la preuve, et une solide preuve, qu'il y a là matière à blâme.

M. Hogarth: J'ai été très intéressé par un point que vous avez soulevé au cours de votre témoignage. Votre suggestion est que l'on devrait enlever l'article 306 du Code criminel et l'insérer dans la *Loi sur les coalitions*, ainsi, les poursuites en vertu de l'article 306, si elles sont intentées, ne pourraient-elles pas être uniquement faites sur l'instigation du Procureur général du Canada?

M. Scollin: Ce n'était pas là ma suggestion. Ce n'était pas ma suggestion non plus, qu'en vertu de la *Loi sur les coalitions*, que les autorités provinciales ne puissent procéder. Mais cela demeurera l'autorité du Procureur général du Canada de procéder. Ce droit il ne le possède pas actuellement en vertu du Code criminel puisque selon ce dernier, le droit de procéder est accordé au procureur général des provinces.

M. Hogarth: Non, mais si l'on étudie la chose en vertu de l'analogie qu'il y a avec la *Loi sur les stupéfiants*, afin ainsi que je comprends la loi, et vous pouvez me corriger si je suis en défaut, et je me réfère là au cas de *McGavin Bakeries* que toute personne puisse engager des procédures en vertu de n'importe quel statut au Canada, que ce soit

[Texte]

General for Canada could institute proceedings under Section 306 of the Criminal Code as it now stands. Is there anything in the Combines Investigation Act, that you know of, that would restrict the right of the Attorney General, or any other person, to lay a charge under Section 33D that we are now putting into the Combines Investigation Act, such as that the consent of the Attorney General for Canada first had not been obtained before prosecution?

Mr. Scollin: No. As far as the general position is concerned I would not have anything to add to what the Minister said when he was giving testimony in relation to Clause 2 of the bill. I think he completely covered the position with regard to prosecutions under the Code at the instance of any person other than the Attorney General of the province. Section 15 of the Combines Investigation Act, Subsection (2), has a specific provision which reads as follows:

(2) The Attorney General of Canada may institute and conduct any prosecution or other proceedings under this Act or section 411 or 412 of the Criminal Code and for such purposes he may exercise all the powers and functions conferred by the Criminal Code on the attorney general of a province.

That is an express provision in favour of the Attorney General.

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Perhaps I should add this, that at the 1967 conference the uniformity commissioners, as they were representing the various attorneys general of the provinces, agreed that Section 306 of the Criminal Code could best be enforced along with the other later provisions of the Combines Investigation Act, and recommended the transfer which is now proposed in Clause 116.

Mr. Hogarth: Yes, then my point still has validity. Regardless of the removal of the section to the Combines Investigation Act attorneys general for the provinces or any other person with reasonable and probable grounds could instigate a prosecution under new Section 33D.

Am I correct that there is no restriction in the Combines Investigation Act that prosecu-

[Interprétation]

un statut fédéral ou un statut provincial. Ainsi le Procureur général du Canada peut procéder en vertu de l'article 306 du Code criminel tel qu'il figure actuellement dans la loi. Y a-t-il un article dans la *Loi sur les coalitions* à votre connaissance qui pourrait restreindre le droit du Procureur général, ou de toute autre personne de déposer plainte en vertu de l'article 33D que nous sommes en train d'inclure dans la *Loi sur les coalitions*, tel que le consentement du Procureur général du Canada, doit être obtenu au préalable avant de procéder?

M. Scollin: Non. En autant que l'idée générale est concernée, je ne pense pas qu'il y ait quoi que ce soit à ajouter à ce que le ministre nous a déclaré lorsqu'il a témoigné vis-à-vis de l'article 2 de ce projet de loi. Je crois qu'il a fait un tour d'horizon complet de la situation quant à la procédure en vertu du Code afin que quiconque puisse intenter des poursuites comme le pourrait faire le procureur général de la province. A l'article 15 de la *Loi sur les coalitions*, paragraphe (2), on a une provision particulière qui se lit comme suit:

Le Procureur général du Canada peut intenter et conduire toute poursuite ou autre procédure prévue par la présente loi, ou par l'article 411 ou 412 du Code criminel. A ces fins, il peut exercer tous les pouvoirs et fonctions que le Code criminel confère au procureur général d'une province.

Ceci est donc une disposition particulière en faveur du Procureur général.

Peut-être je devrais ajouter ceci: c'est qu'à la conférence de 1967 sur l'uniformisation des lois où plusieurs procureurs généraux des provinces étaient représentés, on s'est mis d'accord en ce qui concerne l'article 306 du Code criminel afin que ce dernier article puisse être mis en vigueur avec les autres dispositions de la *Loi sur les coalitions*, et on a recommandé le transfert de cet article qui est maintenant proposé dans l'article 116.

M. Hogarth: Oui, ainsi mon argument est toujours valable. Et même si on faisait disparaître l'article et qu'on le mettait dans la *Loi relative aux enquêtes sur les coalitions*, les procureurs généraux des provinces, ou n'importe quelle autre personne qui aurait de bonnes raisons de le faire, pourraient entamer des poursuites aux termes du nouvel article 33 d).

Il n'y a aucune restriction dans la *Loi relative aux enquêtes sur les coalitions* qui dit

[Text]

tions can only be commenced with the consent of the Attorney General of Canada?

Mr. Scollin: There is no restriction written into the Act which would prevent an individual taking action under the Combines Investigation Act. There are certain additional powers which are given where either the attorney general of a province or the Attorney General of Canada institutes the proceedings. For example, a provision in Subsection (4) of Section 40 of the Act says that:

(4) In any case where subsection (2) of section 31 is applicable...

That is where somebody is about to do one of the prohibited acts under the mergers, monopolies and various Combines offences. Where somebody is about to do that the provision is

(4) In any case where subsection (2) of section 31 is applicable the Attorney General of Canada or the attorney general of the province may in his discretion institute proceedings either by way of an information under that subsection or by way of prosecution.

So there are certain special, exceptional rights given to the attorney general of a province which would not, I think, be applicable in the case of a private individual.

Mr. Chappell: Am I right in understanding that a prosecution under 33 D would require all the preliminary steps required in any other prosecution under the Combines Act—an inquiry, then later on an independent opinion obtains, then a grand jury and then a trial?

Mr. Gilbert: Mr. Chairman, in fairness to the officials I think again it would be wise to stand these sections and to call the Minister and have him give us a broad outline of the Combines Investigation Act and the purpose of this amendment so that we can fully understand what we are doing.

Mr. Scollin: I am sorry I have not been clear enough, gentlemen.

Mr. Gilbert: It is in fairness to the officials.

Mr. Chappell: I have not received an answer to my question yet.

Mr. Scollin: The answer is no. In the case of the Restrictive Trade Practices Commission, for example, there need be no recom-

[Interpretation]

que les poursuites ne pourraient être faites qu'avec l'autorisation du procureur général du Canada, n'est-ce pas?

M. Scollin: Il n'y a pas de restrictions dans la Loi qui empêchent un individu d'agir aux termes de la *Loi relative aux enquêtes sur les coalitions*. Il y a d'autres attributions supplémentaires, en ce qui concerne le procureur général du Canada ou le procureur général des provinces, parce que l'un ou l'autre institue des procédures. Par exemple, le paragraphe (4) de l'article 40 de la loi dit que:

(4) Dans tous les cas où le paragraphe (2) de l'article 31 s'applique...

Il s'agit du cas où quelqu'un est sur le point d'enfreindre la loi ayant trait aux fusions, aux monopoles et autres coalitions. La disposition prévoit alors que:

(4) Dans tous les cas où le paragraphe (2) de l'article 31 s'applique, le procureur général du Canada, ou le procureur général de la province peut, à son gré, intenter une action, soit à la suite d'une plainte reçue en vertu de ce paragraphe, soit à la suite d'une accusation.

Il y a donc des droits exceptionnels qui sont donnés au procureur général de la province, qui ne valent pas, je crois, dans le cas du simple particulier.

M. Chappell: Si j'ai bien compris, une poursuite, aux termes de 33D, exigerait toutes les procédures préliminaires qu'exige toute poursuite entamée en vertu de la *Loi relative aux enquêtes sur les coalitions*, une enquête, puis une opinion, un grand jury et un procès.

M. Gilbert: Monsieur le président, pour être juste envers les fonctionnaires, il serait peut-être bon de réserver ces articles pour convoquer le ministre pour qu'il nous dise ce qui en est de la *Loi relative aux enquêtes sur les coalitions* et du but de cet amendement, de sorte que nous comprenions ce que nous faisons.

M. Scollin: Je crois que je n'ai pas été assez clair, messieurs.

M. Gilbert: Je pense qu'il faudrait être juste pour les fonctionnaires.

M. Chappell: Je n'ai pas encore eu de réponse à ma question.

M. Scollin: La réponse est non. Dans le cas de la Commission sur les pratiques restrictives du commerce, par exemple, il n'est pas

[Texte]

mendation or inquiry before either a 33C or a 33D would be instituted.

Mr. Chappell: May I ask what are the mechanical steps taken under Section 33D to come to trial.

Mr. Scollin: The laying of an information, a preliminary hearing if the election is...

Mr. Chappell: No grand jury.

Mr. Scollin: Well it would be a grand jury in a grand jury province.

Mr. Chappell: A grand jury, and then the trial.

Mr. Scollin: And then the trial.

Mr. Chappell: But there is no independent inquiry?

Mr. Scollin: There need not be an independent inquiry. 33C provisions, for example—that is false advertising as to price—could conceivably be dealt with by way of a preliminary inquiry and then the recommendations, but of course there is a six-months limitation which imposes a very practical obstacle in the way of conducting the inquiry which is conducted in the case of mergers and monopolies.

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Mr. Chappell: Mr. Chairman, something is bothering me. I will place the question and it may very well be that you will say that it is a matter of policy and that Mr. Scollin should not answer it.

Having prosecuted under a Combines case I appreciate how long, difficult, tedious, and expensive one of these trials can be and I have made certain suggestions in respect to changes. But it strikes me that for this type of offence it might be better if it were done in a more summary manner and perhaps a new code of ethics should be developed for the Consumer and Corporate Affairs. I appreciate that we have the criminal aspect. Now I am wondering if this is to be a temporary procedure and that something else is coming up, we hope, or is it planned that this should stay here forever and that we must go through this cumbersome procedure.

The Chairman: Mr. Chappell, in view of the type of question perhaps Mr. Scollin cannot give a valid answer. This is getting into the realm of policy.

If you feel that this is important enough to pursue then we would have to bring Mr. Bas-

[Interprétation]

nécessaire de faire une recommandation ou une enquête avant qu'on entame des poursuites aux termes des articles 33C ou 33D.

M. Chappell: Qu'est-ce qu'on fait aux termes de l'article 33D pour qu'il y ait procès?

M. Scollin: Il faut d'abord une plainte, puis une audience préliminaire, si le choix est...

M. Chappell: Pas de grand jury?

M. Scollin: Un grand jury dans sa juridiction.

M. Chappell: Un grand jury, et puis le procès.

M. Scollin: Et puis le procès.

M. Chappell: Il n'y a pas besoin d'enquête libre?

M. Scollin: Non. L'article 33C, par exemple, où il est traité de publicité trompeuse en ce qui concerne le prix pourrait faire l'objet d'une enquête préliminaire, puis de recommandations. Mais, il y a évidemment une prescription de six mois qui oppose des obstacles très sérieux à la tenue de l'enquête sur les fusions et les monopoles.

M. Chappell: Monsieur le président, il y a quelque chose qui me préoccupe. Il est très possible que vous me répondiez, quand je vous aurai posé la question, que c'est une question de principe et que M. Scollin n'a pas à y répondre.

J'ai poursuivi aux termes de la *Loi relative aux enquêtes sur les coalitions*, et je sais que ces procès peuvent être longs, compliqués et dispendieux. J'ai même fait quelques propositions en ce qui concerne les changements qu'on pourrait y apporter. Mais, il me semble que pour ce genre de délit, il vaudrait mieux prendre des sanctions plus rapides. Peut-être pourrait-on mettre au point un nouveau code d'éthique à être appliqué par le ministère de la Consommation et des Corporations. Peut-être que ce dont on a besoin ici est provisoire. Est-ce que cela va être remplacé par quelque chose de nouveau, ou entend-on aller plus loin?

Le président: Monsieur Chappell, vu ce genre de question, M. Scollin n'est peut-être pas en mesure de répondre. Il s'agit là d'une question de politique générale.

Si vous pensez que la question mérite d'être poursuivie, il faudrait que nous la posions à

[Text]

ford. Frankly, I feel that Mr. Scollin can answer the particular question posed under Clause 116. Of course, he cannot answer questions on policy. Now if we wish to proceed and complete this clause, I think that Mr. Scollin can answer the necessary questions. If we wish to aggress on policy then of course we will have to get Mr. Basford. But it is my opinion, and I would like guidance from the Committee, that as far as this actual clause and its legal implications is concerned Mr. Scollin can very well answer the questions. This is just the chairman's opinion.

Mr. Hogarth: Mr. Chairman, if you want the views of other members of the Committee, although Mr. Chappell's suggestions are extremely interesting and we could go on probably for days being concerned with the policies of the government pertaining to combines, it seems to me, sir, that this merely deals with one small clause in the Criminal Code going into the Combines Investigation Act and perhaps we should reserve a broader discussion for another date.

I only have one further comment to make. We are removing this section from the provisions of the Criminal Code dealing with fraud and it takes away from Section 306 the atmosphere of fraudulent conduct that it enjoyed being in the Criminal Code. I am beginning to wonder, in light of the fact that, constitutionally, the federal government only gets into combines under the provisions of the criminal law, where we are going from a point of view of jurisdiction, constitutionally, in any event. But that again could be the subject of another discussion.

Mr. Chappell: I cannot support it going into the Code at all, if it is proposed that it is going in on a long-term basis. On the other hand if it is the understanding it is to be a temporary stopgap and it is put in there pending somebody doing the research and preparing a new Code, that is a different thing.

Mr. Scollin: You mean a new Combines Investigation Act.

Mr. Chappell: Or perhaps a new Consumer and Corporate Affairs Act which would be a separate supplement to the Code, allowing that it has to be under the Code unless you find a new civil jurisdiction, as is being studied now by the Economic Council.

Mr. Scollin: You realize I am not in a position to give an answer on that.

[Interpretation]

M. Basford. Pour moi, M. Scollin pourrait répondre aux questions qu'on pourrait lui poser, aux termes de l'article 116, mais il ne peut pas répondre aux questions de principe général. M. Scollin peut répondre aux questions qu'on voudra bien lui poser sur cette disposition. Mais, il ne faudrait pas quand même que nous parlions de grandes questions de principe. Il faudrait attendre pour cela d'avoir M. Basford. C'est mon opinion, et je m'en remets encore au Comité. En ce qui concerne cette disposition-ci, et lorsqu'il est question des conséquences légales, M. Scollin pourra certainement nous répondre. Ce n'est que l'opinion du président.

M. Hogarth: Les idées de M. Chappell sont très intéressantes et nous pourrions passer des jours sur ce qui concerne la politique du gouvernement sur les coalitions, mais, ici, il s'agit d'un tout petit article du Code criminel, qui passe du Code criminel à la *Loi relative aux enquêtes sur les coalitions*. Nous pourrions peut-être attendre plus tard avant d'aborder une longue discussion là-dessus.

Une dernière remarque. Nous ferons disparaître cet article des dispositions du Code criminel où il s'agit de fraude. On fait disparaître l'article 306 le côté «conduite frauduleuse» qui se retrouve ailleurs dans le Code criminel. Le gouvernement fédéral ne s'occupant que des coalitions en vertu des dispositions du droit criminel, je commence à me demander où nous allons, du point de vue constitutionnel. Mais, nous pourrions revenir là-dessus une autre fois.

M. Chappell: Je ne voudrais pas du tout que cela passe dans le Code, pour y rester indéfiniment. Mais, s'il s'agit d'une mesure temporaire pour permettre de rédiger un nouveau code, là, c'est différent.

M. Scollin: Vous voulez dire une nouvelle Loi relative aux enquêtes sur les coalitions?

M. Chappell: Il s'agirait plutôt d'une nouvelle Loi sur la consommation et les corporations, qui serait un supplément distinct du Code, pourvu qu'elle relève du Code, à moins de trouver une nouvelle juridiction civile, ce qu'étudie actuellement le Conseil économique.

M. Scollin: Vous pensez bien que je ne suis pas en mesure de vous répondre.

[Texte]

The Chairman: We have had discussion on this clause. Is it the wish of the Committee to pass on it.

Clause 116 agreed to.

On clause 117.

Mr. Hogarth: The question comes up, Mr. Chairman, with respect to mail order firearms. I take it that mail order firearms would have to go through Customs automatically.

Mr. Scollin: Yes.

Mr. Hogarth: And they would be held by the Customs officials until the appropriate permit was obtained.

Mr. Scollin: Until the permit was obtained, yes.

Mr. Peters: Why would they have to go through Customs?

Mr. Hogarth: Well, if they are coming from a foreign country.

Clauses 117, 118 and 119 inclusive agreed to.

On Clause 120—*Coming into force*

Mr. Hogarth: Mr. Chairman, just one moment. You recall that the Minister of Justice gave an undertaking with regard to the promulgation of the...

The Chairman: Was he being facetious?

Mr. Hogarth: I do not see why. After all these hours? Well, I will leave my comments until it comes up again.

The Chairman: Gentlemen, thank you very much. We have covered quite a number of clauses. We will adjourn if it is the wish of the Committee until Tuesday at 9:30 a.m. then proceed into the abortion clauses, homosexual clauses and other clauses that we still have left in the Bill. Is that the wish of the Committee? Mr. Rondeau.

Mr. Rondeau: Thank you very much.

J'aimerais faire une mise au point au sujet de ces articles sur l'avortement. J'aurais aimé convoquer un témoin, mais, étant donné ce qui s'est passé ce matin, si on met à la gêne le témoin que je dois convoquer, non pas 5 ou 10, mais un témoin, comme on l'a fait ce matin au début de la séance, je crois que je vais être obligé de me retirer du Comité, à moins que, aujourd'hui, le Comité ne me donne l'assurance que, mardi, nous pourrions procéder et entendre le témoin à notre satisfaction, et que nous serons un moins réticents que ce matin.

[Interprétation]

Le président: Nous avons discuté cet article. Est-ce que le Comité veut se prononcer sur cet article?

L'article 116 est approuvé.

Article 117.

M. Hogarth: Monsieur le président, on a posé une question en ce qui concerne les armes à feu commandées par la poste. Il me semble que les armes à feu commandées par la poste doivent être dédouanées.

M. Scollin: Oui.

M. Hogarth: Et l'agent des douanes les conserverait jusqu'au dédouanement, n'est-ce pas?

M. Scollin: En effet.

M. Peters: Pourquoi doit-on les dédouaner?

M. Hogarth: Il s'agit des armes à feu venues d'un pays étranger.

Les articles 117, 118 et 119 inclusivement sont approuvés.

Article 120—*Entrée en vigueur*.

M. Hogarth: Un instant. Vous vous souvenez que le ministre de la Justice s'était exprimé en ce qui concerne la promulgation de...

Le président: Voulait-il en rire?

M. Hogarth: Après de si longues heures? Mes observations pourront attendre jusqu'à ce que nous revenions là-dessus.

Le président: Messieurs, merci beaucoup. Nous avons adopté un grand nombre d'articles. Nous allons lever la séance, si vous n'y voyez pas d'inconvénient, jusqu'à mardi prochain, neuf heures et demie, et nous pourrions passer à ce moment-là aux discussions relatives à l'avortement, l'homosexualité, et aux autres dispositions. Monsieur Rondeau.

M. Rondeau: Merci beaucoup.

I would like to say something on those clauses relating to abortion. I had one witness whom I would have liked to have heard but, seeing what went on this morning, if we are merely to embarrass the witness I wish to summon—not ten or fifteen witnesses; just one—as was the case this morning at the beginning of the meeting, I believe that I will have to withdraw from the Committee, unless the Committee gives me the assurance today that, Tuesday, we may proceed to hear the witness to the satisfaction or everybody here, and that we shall be a little less reticent than we were this morning.

[Text]

Peut-être que les médecins ne vous l'ont pas tous dit, mais, j'ai parlé à plusieurs, et ils étaient plus ou moins satisfaits des restrictions et de la tension qu'on a tissées autour de la discussion, ce matin. Je voudrais bien avoir, non pas un engagement formel, mais au moins l'idée du président du Comité sur la question d'avoir un peu plus de liberté, étant donné que, probablement, ce sera le dernier témoin à entendre sur cette matière.

The Chairman: Mr. Rondeau, my reaction to this morning's testimony was simply this—that it was most edifying for the Committee. As perhaps you recall we did pass a resolution by this Committee that we would have a maximum number of six witnesses; that these witnesses would be restricted to giving technical or legal testimony; that we would not allow the witnesses to delve into the substantive questions inherent in this most controversial Bill and into the various arguments why this would not be a good idea. It was the unanimous opinion of the Committee that this was fair. I feel, Mr. Rondeau, that I granted the witnesses considerable latitude this morning. I have had no complaints from the witnesses, I have had no complaints from the other members of the Committee and I feel that if any other witnesses are called they will be treated in like manner. Mr. Valade.

Mr. Valade: On the same point, I want to confirm what Mr. Rondeau has said. I regret to say that most of the witnesses who were here this morning were not very satisfied—not satisfied at all with the way that some of the questions were being hindered from being answered because they want to define, sir, as a technicality—maybe in legal terms an inter-

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pretation of the law but to them a technicality—a medical term or a medical operation.

There have been many things said this morning which were not really edifying. I am talking about things that should have been cleared. We are talking about abortion but nobody has had a chance to define what abortion is in medical terms. Now this is a technical point. I am not reflecting on anybody on this Committee. I am saying that procedures established this morning were not very edifying to those people who are specialists who come here.

And I support Mr. Rondeau in his point that if he is to call a specialist doctor, a professional man, to discuss the abortion part of the Bill, certainly we have to expect and to let this person tell us what he means when he

[Interpretation]

Perhaps the doctors made no mention of it to you, but I spoke to a number of doctors, and they were not entirely satisfied with the limitations put on the discussion and the stress that was created by it, this morning. I do not wish to have a formal undertaking here, but I would like the Chairman of the Committee to say if we will be able to proceed a little more freely, since he will probably be the last witness we will have to hear on that matter.

Le président: Monsieur Rondeau, ma réaction en ce qui concerne les témoignages de ce matin est simplement celle-ci: il était très édifiant pour le Comité. Vous vous souviendrez peut-être que nous avions adopté une résolution, aux termes de laquelle nous ne pouvions pas dépasser le nombre de 6 témoins, que ces témoins ne pourraient donner que des témoignages formels ou juridiques, que nous ne voulions pas leur permettre d'aller jusqu'à l'essence du projet de loi, aux questions de substance. Nous avons indiqué pourquoi nous ne pensions pas que ce soit une bonne idée, et il me semble que c'était juste.

J'ai l'impression que ce matin j'ai été assez libéral pour les témoins; les témoins ne se sont pas plaints; les autres membres du Comité ne se sont pas plaints. Si nous convoquons d'autres témoins, il faudra tous les traiter de la même façon. Monsieur Valade?

M. Valade: ...sur le même point, je voudrais confirmer ce qu'a dit M. Rondeau. Je regrette de dire que la plupart des témoins qui étaient ici ce matin n'étaient pas très satisfaits, ils n'étaient pas satisfaits du tout parce qu'on les empêchait de répondre à certaines des questions qu'on leur a posées. Ce que vous définissez comme une question for-

melle, c'est pour eux la définition d'un terme médical, d'une opération médicale.

Un grand nombre de choses qui ont été dites ce matin n'étaient pas très édifiantes. Je pense à certaines choses qui auraient dû être tirées au clair. Nous parlions d'avortement, mais personne n'a eu la chance de définir ce que veut dire «avortement», au sens médical du terme; c'est un terme technique. Je ne vise personne ici en particulier, je dis que la procédure suivie ce matin n'était pas particulièrement édifiante pour ces spécialistes qui sont venus ici.

J'appuie ici le point de vue exprimé par M. Rondeau. Si M. Rondeau veut citer ici un médecin, pour discuter avec lui l'aspect avortement du projet de loi, il faut tout de même que nous permettions à cette personne de

[Texte]

talks about the technical medical terms of this legislation. And certainly, just as lawyers are inclined to do, when you define a term you have to make other references when you take a decision. These doctors in talking about abortion have to refer themselves to their procedures, to the full scope of their professional field. In this regard I should hope that if Mr. Rondeau wants to call his witnesses an understanding will be arrived at that there will not be an pressure applied to the witnesses or any reticence on our part to listen to them.

I regret to say that this morning at some point a member of this Committee called a witness to order. It should be the Chairman who does this and not members of the committee. These are the remarks I wanted to make. I regret to say that this morning our witnesses, who are very well-known persons in medical fields, were not satisfied with the hearing.

The Chairman: Mr. MacGuigan.

Mr. MacGuigan: Mr. Chairman, I cannot support this point at all. I did support Monsieur Valade's point this morning that we ought to go ahead with the questioning of the witnesses. As you recall I suggested that we go ahead, that we should not certainly refuse to hear them but that we should tell them the bounds within which we expected them to testify. I do not know whether or not the witnesses were satisfied. Personally I do not care about their psychological state of mind. I feel that the Committee had a great deal of useful knowledge presented to it on the question of abortion.

From the dialogue between Mr. Hogarth and one of the medical men we did get a very precise notion, I think, of miscarriage and abortion in medical terms. Maybe there was more to be said but the witnesses did not indicate, at least, that they had anything more to say. And if there were more technical questions to be brought out then this should have been suggested to us at the time and they could have been ruled on.

But it seems to me that the difficulty is—and this was especially apparent with the principal witness this morning—that what he really wanted to speak about was the policy behind the bill, the policy considerations involved, and this is the one thing which we had decided not to hear. We know what the policy considerations are. We do not need outside witnesses in this. These are moral, philosophical questions, and one of the witnesses, the witness who spoke principally, spoke in part along those lines this morning

[Interprétation]

s'expliquer lorsqu'elle parle de termes médicaux. Lorsque les avocats essaient de définir des termes, il faut souvent parler d'autres choses; lorsque ces médecins parlent d'avortement, il faut souvent que les médecins fassent appel au total de leur expérience professionnelle. Si M. Rondeau veut citer son témoin, j'espère que l'on pourra s'entendre; j'espère qu'aucune pression ne sera imposée à ce témoin et que nous pourrions librement l'interroger à notre guise. Certains membres de ce Comité, ce matin, j'ai le regret de le dire, ont rappelé le témoin à l'ordre, alors que ce devrait être le président. Ce sont les observations que j'avais à faire, et je regrette d'avoir à dire que les témoins n'étaient pas très contents de la façon dont on les a traités.

Le président: Monsieur MacGuigan?

M. MacGuigan: Je ne suis pas du tout d'accord.

M. Valade n'avait pas absolument tort de dire ce matin qu'il fallait bien traiter les témoins que nous avions, que nous ne devions pas refuser de les entendre, mais que nous devions leur dire les limites qui leur étaient prescrites. Je ne sais pas si les témoins étaient satisfaits ou pas; peu importe d'ailleurs, peu m'importe leur réaction psychologique. Le Comité a reçu beaucoup de renseignements en ce qui concerne l'avortement.

Le dialogue entre M. Hogarth et l'un de ces médecins nous a donné une notion très exacte, je pense, de ce qu'est la fausse couche, de ce qu'est l'avortement en termes médicaux.

Il y avait peut-être plus de choses à dire, mais les témoins ne nous ont pas fait voir qu'ils avaient d'autres choses à ajouter. S'il y a d'autres questions techniques à traiter, on aurait dû nous le dire à ce moment-là, de façon à prendre une décision à cet égard.

Mais la difficulté vient, et c'était parfaitement manifeste vis-à-vis du témoin principal de ce matin, que ce dont il voulait parler était le principe même du projet de loi, et c'est précisément la chose dont nous ne voulons pas entendre parler.

Nous savons ce que sont ces principes de base, et nous n'avons pas besoin d'eux pour nous les dire. Il s'agit là de questions morales et philosophiques, et le premier témoin, le témoin principal, nous a parlé en partie de cet aspect de la question. J'ai l'impression que

[Text]

and I think that his testimony was irrelevant and I think that any other witness who comes before us should realize that we do not want to hear that kind of testimony and that we have agreed not to hear it.

The Chairman: Mr. McQuaid.

Mr. McQuaid: I am inclined to agree that we had a rather informative discussion here this morning. I agree that some objections were raised to some of the things that I thought the witnesses could properly discuss. But I think, Mr. Chairman, that you ruled very fairly on this. I cannot help but think that the Chair did give the witnesses a fair chance to discuss the testimony within the scope that they were expected to discuss it here in the Committee. I left feeling that we had a very informative meeting this morning. Now, I did take exception to some exceptions which were taken to some of the things that the witnesses were trying to say. But as I say, Mr. Chairman, I think that you did a very fair job in allowing some scope to the witnesses to get across the general idea that they were trying to convey to the Committee. Speaking personally I cannot find anything wrong with the proceedings that we had this morning.

The Chairman: Thank you. Mr. Rondeau.

Mr. Rondeau: I would like a clear indication as to whether, if a witness next Tuesday wants to define what abortion is, he will be allowed to from a medical point of view.

• 1650

I am not going to call the witness if there is to be a repetition of what happened here this morning where two people did not allow the witnesses to say what they wanted to say after we had put them in a circle that they could not get out of.

The Chairman: Is there any further discussion?

An hon. Member: Are we going to hear that witness?

The Chairman: I do not even know what witness is being contemplated. Any further witnesses will have to be screened by the steering committee as passed by resolution of this Committee, and certainly we have agreed that you are entitled to a witness. First of all, we would like to know the name of the witness and then we would like to have this witness approved by the steering committee. It is as simple as that.

[Interpretation]

son témoignage n'avait rien à voir avec ce qui nous intéressait. Tous les témoins qui viennent comparaître devant nous devraient comprendre que nous ne voulons pas entendre des témoignages de ce genre.

Le président: Monsieur McQuaid?

M. McQuaid: Je pense que la discussion de ce matin était fort utile. Je conviens que certaines objections ont été exprimées en ce qui concerne les témoignages qu'auraient pu nous donner nos témoins. Je pense que le président a été parfaitement juste ce matin; j'ai l'impression que le président s'est montré très tolérant, il a donné aux témoins toute la latitude de discuter la question dans les limites sur lesquelles nous nous étions entendus. Quand je suis parti, j'ai eu l'impression que nous avions eu ce matin une séance très utile.

Je n'étais pas toujours d'accord, lorsqu'on a essayé d'empêcher les témoins de dire certaines choses, mais, dans l'ensemble, le président s'est fort bien tiré d'affaires; il s'est montré relativement libéral, et il leur a permis de dire ce qu'ils avaient à dire au Comité. Personnellement, je ne trouve rien à redire à ce qui s'est passé ce matin.

Le président: Monsieur Rondeau?

M. Rondeau: Si quelqu'un pouvait nous aider à définir l'avortement mardi prochain, il aura le droit de le faire, n'est-ce pas, du point de vue médical?

Je ne vais pas appeler un témoin si, comme deux personnes l'ont fait ce matin, on ne leur permet pas de dire ce qu'ils ont à dire, s'ils se mettent dans une situation dont ils ne peuvent pas se sortir.

Le président: Est-ce qu'il y a d'autres discussions?

Une voix: Allons-nous entendre ce témoin?

Le président: Je ne sais même pas lequel nous allons entendre. Tous les autres témoins devront être approuvés, évidemment par le Comité de direction conformément aux dispositions prises par le Comité et vous avez parfaitement raison de citer un témoin. Nous aimerions savoir le nom du témoin et nous aimerions ensuite que le comité de Direction approuve ce témoin. C'est aussi simple que ça.

[Texte]

Mr. Rondeau: We could give the name right now if you want us to.

Mr. Valade: On that point, Mr. Chairman, you said we were going to go on to the abortion clauses next Tuesday. If we are going to hear a witness...

The Chairman: Mr. Valade, this is the first time I have heard about this witness.

Mr. Rondeau: I could give you the name right now. It is Dr. Jacques Boulay from Quebec City. He asked me which part of the bill I wanted him to clear up. I said, abortion, but he wants to know the point of view written into the bill. But if he is too restricted and cannot go outside the subject he will be like the two doctors this morning. They told me they never want to be called here again.

The Chairman: If you can explain to your witness that he will be confined to giving evidence in relation to the technical and perhaps administrative aspects of the clauses, that is fine; then he will be approved. If he does not want to come under those conditions he will not be allowed to come.

Mr. Rondeau: I will tell him that, but if we start to fool around on Tuesday as we have this morning he may not say too much about it.

Mr. MacGuigan: Mr. Chairman, I think there was a slight misunderstanding this morning to begin with about the number of witnesses, whether we were having one or whether we were having six. I even suspect that there were two or three physicians here this morning who did not speak at all because they were not asked any questions. If so, I do not know why so many came, because really it was an unmanageable number especially if there were two or three others who did not speak. I think it is now clear that we will hear only one witness but that he is entitled to have other advisers if he wants to. I think we have that cleared up now, but I understand Mr. Rondeau wants only a single witness. Is that right?

Mr. Rondeau: Yes.

Mr. MacGuigan: Therefore, there should be no problem of that kind. I think we are quite prepared to treat him fairly, but I say that we are prepared to hear a medical man speaking as a medical man, not as a philosopher. That is all.

Mr. Rondeau: Well, this morning...

The Chairman: Order, please. Mr. Gilbert?

[Interprétation]

M. Rondeau: Nous pourrions nommer le témoin tout de suite, si vous le voulez.

M. Valade: Sur ce point, monsieur le président, vous aviez dit que nous allions passer à la discussion sur l'avortement, mardi prochain. Si nous allons entendre un témoin...

Le président: C'est la première fois, M. Valade, que j'entends parler de ce témoin.

M. Rondeau: Je peux vous donner son nom tout de suite. C'est le docteur Jacques Boulay de la ville de Québec, il m'a demandé de quelle partie du bill vous voulez qu'il parle. Je lui ai dit l'avortement, mais il veut connaître le point de vue mentionné pour le bill. Mais si on l'empêche de traiter librement du sujet, il agira exactement comme les deux médecins de ce matin. Ils m'ont demandé de ne plus les appeler à l'avenir.

Le président: Vous pouvez expliquer à votre témoin qu'il ne pourra donner que des témoignages pourtant sur les aspects techniques ou éventuellement administratifs de ces articles. S'il est d'accord il pourra venir; s'il ne l'est pas, il ne lui sera pas permis de venir.

M. Rondeau: Je le lui dirai, mais il ne faudrait pas que nous nous comportions comme nous l'avons fait ce matin, car dans ce cas il ne dira pas grand-chose.

M. MacGuigan: Monsieur le président, je crois qu'il y a eu un malentendu ce matin en ce qui concerne le nombre de témoins, pour savoir s'il devrait y avoir un ou six. J'ai même l'impression qu'il y avait deux ou trois médecins ici ce matin qui n'ont pas parlé du tout, pour la simple raison qu'on ne leur a posé aucune question. Si c'est ainsi, je ne sais pas pourquoi ils sont venus en si grand nombre parce qu'ils étaient vraiment trop nombreux même s'il y avait deux ou trois qui n'ont pas parlé. Il est clair que nous n'entendrons qu'un seul témoin, mais qu'il a droit, à faire appel à d'autres conseillers s'il le veut. Je crois que cette question est réglée, mais si je comprends bien, M. Rondeau ne veut avoir qu'un seul témoin. Ai-je bien compris?

M. Rondeau: Oui.

M. MacGuigan: Par conséquent, cela ne devrait pas susciter de problème. Nous sommes tout à fait disposés à le traiter avec justice. Mais nous voulons qu'un médecin nous parle en médecin et non en philosophe. C'est tout ce que nous voulons.

M. Rondeau: Eh bien, ce matin...

Le président: A l'ordre, s'il vous plaît. Monsieur Gilbert?

[Text]

Mr. Gilbert: Mr. Chairman, I am sure Mr. Rondeau knows the rules under which we agreed to bring these witnesses. He was a member of the steering committee and it was very precise at the meeting. We brought forth a motion here which was unanimously accepted to restrict the remarks of any of these witnesses to the administrative and technical aspects of the bill, and not to go into the policy and the substance of the provisions. I cannot understand why Mr. Rondeau would want to bring a witness who would attempt to evade the policy and the substantive provisions of this bill.

Mr. Rondeau: As Mr. Valade said just a few minutes ago, a technicality for the doctor might be substance for you, so if we are too restrictive he might not be able to say anything. I noticed this morning that quite a few members objected to some of the witnesses, but after a while they were the ones who asked a moral question.

Mr. Hogarth: I think there is a basic fundamental difference of opinion concerning what a witness before this Committee is at this time. We could call an endless number of persons in Canada to give us their comments on whether we are doing the right or wrong thing with respect to the various proposals we are putting forward.

• 1655

The first witness this morning, Dr. Lavigne, unfortunately did not realize and was not told by the persons that called him that we were interested solely in what special technical advice he could give us with respect to the medical aspects of this bill.

I do not blame him because obviously he did not know, but he embarked in the first instance upon a philosophical discussion interjecting what he thought the law should be. Now, this is the impression I got and I am not suggesting he should not have opinions in that regard. It is not that we do not want to hear those opinions; it is just that for every witness you might call who expresses such opinions there are at least 500 persons in Canada who would be anxious to get before this Committee and give it the same type of evidence which might conflict, might be contrary, might be different and we would go on endlessly.

It was my understanding, as has been said here, that these witnesses are to be confined to special technical scientific knowledge of the subject matter upon which they are going to testify. If Dr. Boulay whom you propose to call has such qualifications that he can assist

[Interpretation]

M. Gilbert: Monsieur le président, je suis sûr que M. Rondeau connaît le Règlement sur lequel nous nous sommes mis d'accord pour convoquer ces témoins. Il était membre du comité de direction et la chose était très claire à la réunion. Nous avons présenté ici une motion acceptée à l'unanimité, et qui limitait les observations des témoins aux aspects administratifs et techniques du projet de loi en laissant de côté la politique et la substance du bill. Je ne vois pas pourquoi, M. Rondeau, voudrait faire venir ici un témoin qui essaierait à éluder l'aspect politique et la substance des dispositions du bill.

M. Rondeau: Comme M. Valade le disait, il y a un instant, ce qui est une question technique pour un médecin peut être une question de substance pour vous, il ne faudrait pas nous montrer trop strictes à ce sujet car il pourrait ne plus vouloir dire quoi que ce soit.

Un bon nombre de députés qui s'étaient opposés aux témoins sont ceux-là mêmes qui ont posé des questions sur la moralité.

M. Hogarth: Je pense qu'on devrait d'abord bien comprendre la signification d'un témoin ici. Nous pourrions citer un nombre indéfini de personnes au Canada pour nous dire si les diverses propositions que nous faisons sont bonnes ou mauvaises.

Le premier témoin, ce matin, le docteur Lavigne, malheureusement, ne s'était pas rendu compte que la personne qui l'avait convoqué ne lui avait pas dit que ce qui nous intéressait c'était précisément les aspects techniques du projet de loi. Il est certain que je ne lui reprocherai rien. Il a commencé par placer la discussion sur un plan philosophique. Il nous a dit ce que, selon lui, la loi devrait être. C'est l'impression que j'ai eue. Je ne dis pas qu'il n'a pas le droit d'avoir d'opinion à cet égard. Ce n'est pas que nous ne voulons pas entendre ses opinions; c'est que pour chaque témoin que vous appelez pour connaître son opinion, il y a 500 personnes qui voudraient bien comparaître devant le Comité pour donner des témoignages du même genre, ou qui seraient contraires et nous pourrions continuer ainsi indéfiniment.

Je croyais comprendre que ces témoins devraient s'en tenir au côté technique et scientifique des questions dont ils ont à témoigner. Si le docteur Boulay, que vous comptez convoquer, possède des connaissances scientifiques et techniques, susceptibles de nous être

[Texte]

us with respect to technical, scientific advice, I am certainly all for hearing him, but I do not think we should go into Dr. Boulay's opinion of whether or not we should proceed with any of the sections of this bill from a political or sociological point of view.

I would just like to add one more thing, Mr. Chairman, because it is in a sense an I-told-you-so proposition. I suggested to the steering committee that before we hear any witnesses we have a summary of the evidence they are going to give and in that way we could determine exactly the type of scientific evidence they have to offer. In any event, I think we should continue the policy we have set; if Mr. Rondeau wants a witness to come who can give us such advice I would certainly be happy to hear him and examine him, but within the scope of his special ability.

Mr. Valade: Mr. Chairman, I raise a question of privilege. I know Mr. Hogarth did not mean it the way he said it when he stated that Dr. Lavigne was not told how he should proceed on technicalities this morning. I certainly made this very clear to Dr. Lavigne when I called him, but I want to make this difference very clear: Perhaps to lawyers and to us technical definitions within the scope of this bill mean something different than they do to doctors, and I think they acted in very good faith.

Mr. Hogarth: I am not suggesting any bad faith, please.

Mr. Valade: This was an implication I know you did not mean but which I wanted to clear up. On that same point I would also say, Mr. Chairman, that you dealt very diligently and very honestly with these matters this morning. No shadow was cast on your impartiality at all. That is not what I meant. I meant that some witnesses were pressured by members of the Committee. This does not cast any reflection on you, Mr. Chairman.

The other point I want to raise is that before we study the abortion clauses I think we should have the Committee's report in both French and English, because some of the witnesses' replies will be very important for us when we come to the clause by clause study. It would be quite unfair for us to go ahead and study these clauses without having the reports.

Mr. McQuaid: Mr. Chairman, was there not a suggestion when we started the study of this bill that there might be made available to us some of the evidence that was introduced before the committee on Health when they studied this question?

[Interprétation]

utiles, je suis tout à fait disposé à l'entendre, mais je ne crois pas que nous devrions entendre ses opinions si oui ou non nous devrions adopter ou ne pas adopter le bill du point de vue politique ou sociologique. Je voudrais ajouter une autre observation, monsieur le président, j'ai déjà proposé au Comité de direction qu'avant d'entendre un témoin, nous obtenions un résumé du témoignage qu'il devra faire pour savoir à peu près le genre de renseignement technique qu'il compte nous offrir. Quoi qu'il en soit, nous devrions rester fidèle à la politique que nous avons adoptée ici. Si, monsieur Rondeau, veut convoquer son témoin qui peut nous donner des avis scientifiques, je me ferai un plaisir de l'écouter. Mais il faudrait aussi qu'il parle dans les limites de sa compétence.

M. Valade: Monsieur le président, j'aurais une question de privilège à poser. Je sais que ce n'était pas vraiment dans l'intention de M. Hogarth, lorsqu'il a dit que le docteur Lavigne n'avait pas été prévenu de la façon dont il devait procéder ce matin. J'avais appelé le docteur Lavigne et je lui avais clairement expliqué cette différence: Dans le cadre de ce bill, les définitions techniques ont pour nous et pour les avocats une signification que les médecins interprètent différemment, et à mon avis, c'est de bonne foi qu'ils ont agi.

M. Hogarth: Je vous prie de croire que ce n'est pas là mon intention.

M. Valade: Je sais bien que M. Hogarth ne voulait pas dire que je n'avais pas prévenu mon témoin, mais c'est ainsi. Je dois aussi dire, monsieur le président, que vous avez traité très honnêtement les témoins, vous avez agi d'une façon absolument impartiale. Certains témoins ont, n'ont peut-être pas été très bien traités par d'autres membres du Comité, mais votre impartialité n'est pas en cause, monsieur le président.

J'ajoute qu'avant de passer aux clauses sur l'avortement, nous devons avoir le rapport du Comité en français et en anglais, car certaines des réponses des témoins nous seraient très importantes, lorsque nous devrions discuter de la question article par article. Il serait très injuste si ce Comité n'avait pas sous les yeux, les rapports du Comité, le compte rendu du Comité, avant de poursuivre les travaux.

M. McQuaid: Monsieur le président, au début de l'étude de ce bill, n'avait-on pas proposé que nous disposions de certains témoignages qui ont été présentés devant le Comité de la santé lorsqu'ils ont étudié cette question?

[Text]

The Chairman: That is quite true, Mr. McQuaid. It was intended that the Health and Welfare committee's report on abortion would be available to all members of the Committee. I do not know whether this meant that the report would be printed for members of the Committee so each would have a copy or whether there would be three or four copies available, but certainly this report should be available to all members of the Committee.

Mr. Hogarth: That extended it to the other reports, too.

The Chairman: This is for all the reports.

Mr. McQuaid: It would be very helpful if we had it before we discuss the abortion clauses in detail.

Mr. Gilbert: I think we should clear up the point concerning availability. They should not only be available; they should be circulated to the members of the Committee.

The Chairman: The Clerk says that he will have copies of the Health and Welfare report made available.

Mr. Gilbert: This is the report, not the minutes?

The Clerk: The report.

Mr. Gilbert: How soon?

• 1700

The Clerk: You will probably have it by tomorrow.

Mr. Valade: Mr. Chairman, I was referring to the Minutes of Proceedings, of this Committee.

The Chairman: Yes, that is another point. Mr. Clerk, do you have any idea when the Minutes of Proceedings pertaining to abortion will be available?

The Clerk: Because of difficulties caused by the technical terms this morning, it will be a while before it goes to the printer. If it gets to the printer on Monday we will be fortunate.

The Chairman: Of course, on Tuesday we can deal with the breathalizer sections which are still in abeyance. There are sections on insanity which are still in abeyance and this may give enough time to enable us to have before us the abortion committee report and also the Minutes of Proceedings.

Mr. Valade: May I make a suggestion that Mr. Rondeau's witness be heard before so that...

[Interpretation]

Le président: C'est parfaitement exact, monsieur McQuaid. Le rapport du Comité de la santé et du bien-être sur l'avortement devait être mis, en principe, à la disposition de tous les membres du Comité. Je ne sais pas s'il était question que le rapport serait imprimé afin que vous disposiez d'une ou de plusieurs copies, mais ce rapport devrait être à la disposition de tous les membres du Comité.

M. Hogarth: En serait-il ainsi pour tous les autres rapports?

Le président: En effet.

M. McQuaid: Ce serait très utile, si nous en disposions avant de commencer les discussions sur l'avortement en détail.

M. Gilbert: Nous devrions éclaircir cette question de disponibilité. Ils devraient être non seulement disponibles, mais ils devraient être distribués à tous les membres du Comité.

Le président: Le secrétaire nous dit qu'il aura les copies du rapport du Comité de la santé.

M. Gilbert: C'est le rapport, non les minutes?

Le secrétaire: Le rapport.

M. Gilbert: Quand pourrons-nous l'avoir?

Le secrétaire: Vous pourriez probablement l'avoir demain.

M. Valade: Monsieur le président, je parlais du compte rendu de ce Comité.

Le président: Oui, c'est une autre question. Monsieur le secrétaire, avez-vous une idée sur le moment où nous pourrions avoir le compte rendu?

Le secrétaire: A cause de difficultés causées par les termes techniques ce matin, l'imprimeur ne le recevra pas de sitôt. Nous aurons vraiment de la chance, s'il le reçoit lundi.

Le président: Mardi, nous pourrions parler des articles concernant l'ivressomètre, et qui sont encore en suspens. Il y a également d'autres questions relatives à l'aliénation mentale. Ce retard nous permettra d'obtenir le rapport du Comité sur l'avortement ainsi que le compte rendu.

M. Valade: Puis-je proposer que le témoin de M. Rondeau soit entendu avant, afin que...

[Texte]

Mr. Rondeau: May I ask my witness to appear on Tuesday?

The Chairman: You are quite at liberty, Mr. Rondeau, within the confines of this resolution, to ask your witness to appear on Tuesday morning, if it is agreeable with the Committee. It is certainly agreeable to the Chairman.

Mr. Rondeau: He told me he could be ready on Tuesday, but I will have to get in touch with him.

The Chairman: Will you let the Clerk know if your witness is available?

Mr. Rondeau: Tuesday or Thursday?

The Chairman: I think it will have to be Tuesday, Mr. Rondeau.

Mr. Rondeau: All right. He was supposed to be ready on Tuesday.

The Chairman: You can take him aside and explain the feeling of the Committee to him.

Mr. Rondeau: You will know for sure, if...

The Chairman: All right.

Mr. McQuaid: Mr. Chairman, would it be feasible to perhaps consider the advisability of leaving consideration of the homosexuality and abortion clauses of the bill until after the Easter recess so that we would be sure to have the minutes of these proceedings, the report of the Committee, and so on? I realize you probably cannot make that decision but I wonder if that could be done, provided the government is not in too much of a hurry to have the bill presented.

The Chairman: I do not know about the government, but I think the members of this Committee would like to complete the bill as soon as possible.

Mr. Peters: May I ask another question, Mr. Chairman, on a subject you just mentioned. You spoke of the breathalyzer test sections. Has the Committee examined the methods of taking this test? Two major subjects were mentioned the other day, one was the container devices and the other was the machines themselves, and it was indicated that there were a number of machines. Are we going to have reports on what these machines will do and what their tolerances are, or are we just going to consider a breathalyzer machine as being acceptable under this Act without examining the various kinds...

[Interprétation]

M. Rondeau: Puis-je demander que mon témoin comparaisse mardi?

Le président: Vous pourrez faire entendre votre témoin mardi matin, si vous le voulez, à condition de respecter les limites de cette résolution, si le Comité est d'accord. Le président est certainement d'accord.

M. Rondeau: Il serait prêt à venir mardi, mais il faut que je prenne contact avec lui.

Le président: Vous préviendrez le secrétaire si votre témoin est disponible, n'est-ce pas?

M. Rondeau: Mardi ou jeudi?

Le président: Je crois qu'il faudra que ce soit mardi, monsieur Rondeau.

M. Rondeau: D'accord, il devait être prêt pour mardi.

Le président: D'ici là vous pourrez lui exposer les sentiments du Comité.

M. Rondeau: Vous le saurez sûrement, si...

Le président: Très bien.

M. McQuaid: Est-ce que ce ne serait pas opportun de réserver l'examen des questions relatives à l'avortement et à l'homosexualité jusqu'après les vacances de Pâques? De sorte que nous soyons sûrs d'avoir le compte rendu, le rapport du comité, etc., sous les yeux. Ce n'est peut-être pas une décision que vous pouvez prendre, mais ce serait, il me semble, une très bonne idée, si le gouvernement n'est pas trop pressé pour présenter le projet de loi.

Le président: Je ne sais pas quel est le sentiment du gouvernement, mais je pense que les membres du Comité aimeraient terminer l'examen du bill aussi rapidement que possible.

M. Peters: Vous avez parlé de l'éthylomètre. Est-ce que le Comité a examiné les méthodes de cette analyse? On a mentionné deux sujets importants l'autre jour. Il s'agissait des contenants, et on a parlé aussi des appareils, et on a dit qu'il y avait plusieurs appareils. Est-ce que nous allons avoir des rapports sur le fonctionnement de ces machines, leurs tolérances, ou est-ce que nous allons considérer un éthylomètre comme acceptable aux termes de cette loi sans examiner les divers genres d'appareils...

[Text]

The Chairman: Of course, this is not my decision but I understood there would not be a physical inspection of the proposed machine. We have had evidence as to the performance of the machine. Mr. Peters, there is also a report from the Justice Committee of the prior Parliament pertaining to the breathalyzer question. I think you would find it most helpful if you would be interested in perusing that report.

Mr. Peters: It seems to me that if we are going to pass these sections that what machine is going to be used has been kind of left in abeyance. It is not necessarily the same machine in each area. Obviously there are different specifications for these machines, and not only specifications but different results and tolerances. I suppose it is a bit like executing somebody; it does not matter if you use an axe or a sledgehammer!

Perhaps it is not the wish of the Committee, but it seems to me that there should be some technical discussion on the various kinds of machines that are available and what the results of those are, because it will involve the tolerances that the court will have to operate under.

• 1705

Mr. Hogarth: Mr. Chairman and my hon. friend, I have a text in my office—I quoted it earlier during the debates—which sets forth the operation of several types of these machines, and if my friend wishes he is welcome to have a look at the text for his own assistance.

Mr. Peters: I do not know anything about these machines. I believe we have had them on other committees and there was some discussion of the various types. However, this Committee is not even sure that the tolerances are anywhere near the same for the various machines and you may find one province using one kind and another province using another kind, and if this is true the law will not apply equally to everybody. I do not suggest that we should look at the machines, although that would be a lot of fun, and carry on an experiment of our own...

Mr. Hogarth: That would be more fun.

Mr. Peters: It would probably be a source of some amusement, but it seems that those tolerances have been established and the Department must have looked at a number of them that they would approve. We are providing a blanket type of coverage in the decision to accept the .08 percentage, and this will not be the same on all machines. It will

[Interpretation]

Le président: Ce n'est pas une décision que j'ai à prendre. Mais je ne crois pas que nous allons examiner la machine proposée. Nous avons eu des rapports sur le rendement de la machine. Il y a également le rapport du Comité de la Justice de la session précédente qui s'est occupé justement de la question de l'éthylomètre. Je crois que vous le trouveriez intéressant à lire.

M. Peters: Pourtant, il me semble que si nous allons adopter ces articles, on a oublié de mentionner quelles machines vont être employées. On n'utilisera pas nécessairement la même machine dans toutes les régions. Les normes ne seront évidemment pas toujours les mêmes, ni les tolérances ni les résultats. C'est comme pour une exécution: peu importe si on utilise un marteau-pilon ou une hache!

Je ne sais pas ce qu'en pense le Comité, mais je me demande si le Comité ne voudra pas en discuter les aspects techniques, les divers genres de machines disponibles et de leurs résultats, car cela met en cause les tolérances dont le tribunal devra tenir compte.

M. Hogarth: J'ai un texte dans mon bureau que j'ai cité dans les discussions antérieurement, où on explique comment fonctionnent un certain nombre de ces machines, et mon honorable collègue est tout à fait le bienvenu s'il veut en prendre connaissance pour sa propre gouverne.

M. Peters: Je ne connais rien au sujet de ces machines, mais je crois qu'on en a parlé à d'autres comités, on a discuté les différents genres d'appareils. Mais le Comité n'est même pas assuré que la tolérance sera la même pour les divers appareils, et comme les provinces n'utiliseront pas les mêmes genres d'appareils, l'application de la loi ne serait plus la même d'une province à l'autre. Je ne propose pas qu'on examine les machines, bien que ce serait très amusant. Nous pourrions même faire l'expérience nous-même...

Le président: Ce serait en effet beaucoup plus amusant.

M. Peters: Ce serait quand même amusant. Il me semble que ces tolérances ont été établies et que le ministère a dû jeter un coup d'œil sur divers types d'appareils avant de les approuver. En acceptant un pourcentage de .08 on établit une couverture générale, et pourtant la tolérance ne sera pas la même pour chaque machine. La loi ne sera donc pas

[Texte]

not work the same on all machines. The tolerance will be different on different machines and therefore the law will not be applied in an equal way. I think it is unreasonable to accept this type of decision without at least having examined it.

The Chairman: I was just talking to Mr. Scollin and he brought out the point that any machine that is used will have to be approved by the Attorney General of Canada, who at the present time is Mr. Turner. However, that is a good observation and I am sure the Committee will take it under consideration.

The Committee is adjourned until 9:30 a.m. on Tuesday morning.

[Interprétation]

appliquée de façon équitable. Il me semble assez déraisonnable, donc, de prendre une décision de ce genre sans avoir pris connaissance de tous ces aspects.

Le président: M. Scollin me rappelle que toutes les machines utilisées devront être approuvées par le procureur général du Canada, qui, à l'heure actuelle, est M. Turner. C'est quand même une remarque importante que le Comité pourra prendre en considération.

Le Comité s'ajourne jusqu'à 9h30 mardi matin.

OFFICIAL BILINGUAL ISSUE

FASCICULE BILINGUE OFFICIEL

HOUSE OF COMMONS

CHAMBRE DES COMMUNES

First Session

Première session de la

Twenty-eighth Parliament, 1968-69

vingt-huitième législature, 1968-1969

STANDING COMMITTEE

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COMITÉ PERMANENT

ON

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DE LA

JUSTICE AND LEGAL AFFAIRS

JUSTICE ET DES QUESTIONS
JURIDIQUES

Chairman

Mr. Donald R. Tolmie

Président

MINUTES OF PROCEEDINGS
AND EVIDENCE

PROCÈS-VERBAUX ET
TÉMOIGNAGES

No. 13

TUESDAY, MARCH 25, 1969

LE MARDI 25 MARS 1969

Respecting

Concernant le

BILL C-150,

BILL C-150,

Criminal Law Amendment Act, 1968.

Loi de 1968 modifiant le droit pénal.

WITNESS—TÉMOIN

(See Minutes of Proceedings)

(Voir Procès-verbal)

STANDING COMMITTEE ON
JUSTICE AND LEGAL

AFFAIRS

COMITÉ PERMANENT
DE LA

JUSTICE ET DES QUESTIONS
JURIDIQUES

Chairman Mr. Donald R. Tolmie
Vice-Chairman M. André Ouellet
and Messrs.

Président
Vice-Président
et Messieurs

Alexander,
Blair,
Cantin,
Chappell,
Deakon,
Gervais,

Gilbert,
Hogarth,
MacEwan,
¹ Mrs. MacInnis (M^{me}),
MacGuigan,
² Marceau,

McCleave,
McQuaid,
Murphy,
Rondeau,
Valade,
Woolliams—20.

(Quorum 11)

Le secrétaire du Comité
Robert V. Virr
Clerk of the Committee

Pursuant to S.O. 65(4) (b)

Conformément à l'article 65(4)(b) du
règlement

¹ Replaced Mr. Peters on March 24

¹ Remplace M. Peters le 24 mars

² Replaced Mr. Guay (Lévis) on
March 24

² Remplace M. Guay (Lévis) le 24 mars

MINUTES OF PROCEEDINGS

(Text)

TUESDAY, March 25, 1969.
(18)

The Standing Committee on Justice and Legal Affairs met this day at 9:40 a.m., the Chairman, Mr. Tolmie, presiding.

Members present: Mrs. MacInnis (*Vancouver-Kingsway*), and Messrs. Blair, Cantin, Chappell, Deakon, Gervais, Gilbert, Hogarth, MacEwan, MacGuigan, McCleave, Murphy, Ouellet, Rondeau, Tolmie, Valade, Woolliams (17).

Also present: Messrs. Dumont, Fortin, Godin, Lambert (*Bellechasse*), Matte, Rodrigue.

Witnesses: Dr. Benoit Légaré, Gynaecologist, Hôpital St-François d'Assise, Québec; Dr. René Jutras, Chief of Paediatrics, Hôtel-Dieu, Arthabaska, Québec.

The Chairman introduced Dr. Légaré and invited him to present his brief.

Dr. Légaré responded to questions.

Thereupon Dr. Jutras showed slides relating to genetics and the viability of human life and then responded to questions.

On motion of Mr. Hogarth, it was

Agreed,—That reasonable travelling and living expenses be paid to Drs. Légaré and Jutras.

There being no further questions at 11:40 a.m., the Committee adjourned until 3:30 p.m. this day.

PROCÈS-VERBAL

(Traduction)

MARDI le 25 mars 1969
(18)

Le Comité permanent de la justice et des questions juridiques s'est réuni aujourd'hui à 9h40 a.m. sous la présidence de M. Tolmie, président.

Présents: M^{me} MacInnis (*Vancouver-Kingsway*), et MM. Blair, Cantin, Chappell, Deakon, Gervais, Gilbert, Hogarth, MacEwan, MacGuigan, McCleave, Murphy, Ouellet, Rondeau, Tolmie (17).

Aussi présents: MM. Dumont, Fortin, Godin, Lambert (*Bellechasse*), Matte, Rodrigue.

Témoins: Le docteur Benoit Légaré, gynécologue, Hôpital Saint-François-d'Assise, Québec; le docteur René Jutras, Directeur du département de pédiatrie, Hôtel-Dieu, Arthabaska, Québec.

Le président introduit le docteur Légaré et l'invite à déposer son mémoire.

Le D^r Légaré répond aux questions.

Ensuite le D^r Jutras a fait la projection de diapositives relatives à la génétique et la viabilité de l'être humain et il a ensuite répondu aux questions.

Sur la proposition de M. Hogarth,

Il a été convenu,—Que des frais de voyage raisonnables et qu'une indemnité de subsistance soit payée aux D^{rs} Légaré et Jutras.

Les questions étant épuisées, le Comité s'ajourne à 11h40 du matin jusqu'à 3h30 de l'après-midi.

*Le secrétaire du Comité,
R. V. Virr,
Clerk of the Committee.*

[Texte]

EVIDENCE

[Recorded by Electronic Apparatus]

Tuesday, March 25, 1969

● 0939

The Chairman: Gentlemen, we now have a quorum. We have with us this morning Dr. Benoit Légaré, Gynaecologist at St. François d'Assise Hospital, Quebec City and Dr. René Jutras, Chief of Paediatrics Hotel-Dieu, Arthabaska. Dr. Légaré will be our chief witness.

Dr Benoit Légaré (gynécologue, Hôpital St-François d'Assise, Québec): Monsieur le président, mesdames, messieurs.

Je remercie les députés qui font partie de ce Comité, eux qui, malgré leurs occupations, avant de voter une loi aussi importante que celle concernant l'avortement, consacrent des heures précieuses à entendre les différentes opinions, dans le but d'assurer une législation qui soit le plus juste possible.

Nous ne sommes pas venus ici comme médecins catholiques. Nous serions, en effet, très malvenus de vouloir, par des lois, imposer à ceux qui ne partagent pas nos croyances religieuses les exigences de notre morale. Une argumentation basée sur ces principes affaiblirait considérablement notre plaidoyer.

C'est en tant que médecins soucieux d'aider les législateurs à formuler une loi juste, respectueuse de la vie humaine, que nous sommes ici ce matin. Aussi voulons-nous nous en tenir strictement au niveau de la loi naturelle. Notre idée est donc de vous convaincre que le fœtus, dès sa conception, est un être humain si imparfait soit-il. Si nous réussissons, je crois que notre témoignage aura été très utile.

Le docteur René Jutras, pédiatre, s'appuyant sur la génétique, se chargera de cette partie technique que nous nous devons de vous communiquer.

J'admets qu'entre médecins et biologistes, l'unanimité n'est pas faite sur ce point.

Je sais que certains soutiendront qu'au départ la matière du fœtus est trop imparfaite pour être classifiée parmi la catégorie des êtres humains. Mais, où est-il celui qui a la science suffisante pour décider que ce n'est qu'à la huitième ou à la douzième semaine de vie que cette perfection apparaît? On ne doit

[Interprétation]

TÉMOIGNAGES

(Enregistrement électronique)

Le mardi 25 mars 1969

Le président: Messieurs, nous avons maintenant quorum. Ce matin, nous avons parmi nous, le docteur Benoit Légaré, gynécologue à l'hôpital Saint-François-d'Assise de Québec (Qué.) et le docteur René Jutras, médecin en chef du département de pédiatrie de l'Hôtel-Dieu d'Arthabaska. Le docteur Légaré sera notre témoin principal.

Dr. Benoit Légaré (Gynaecologist, St. François d'Assise Hospital, Quebec City): Mr. Chairman, ladies and gentlemen.

I think the members of this Committee for taking time out from their important occupations before voting on as important a bill as the one dealing with abortion to listen to the different viewpoints in order to ensure legislation that will be as fair as possible.

We have not come here as Catholic physicians. It would be ill-advised on our part to attempt to impose, through laws, our moral viewpoint on those who do not share our religious beliefs. An argument based on these principles would greatly weaken our case.

It is as physicians anxious to assist the legislators in formulating a fair law, a just law, respectful of human life that we have come here to give evidence this morning. We want to keep strictly within the bounds of natural law. Thus, our idea is to convince you that the foetus, from the moment of conception, is a human being, however imperfect. If we succeed in convincing you of this, I feel that our evidence will have been most useful.

Dr. René Jutras, Paediatrician, will use arguments in genetics to explain the technical part which we wish to communicate to you.

I admit that physicians and biologists are not unanimous on this point.

I am aware that some will maintain that, in the first place, foetal matter is too imperfect to be classified in the category of human beings. But who has sufficient knowledge of the subject to decide that it is only in the eighth or twelfth week of life that this perfection becomes apparent? We should not fear

[Text]

pas craindre d'affirmer qu'en attendant le doute nous oblige à nous abstenir, autant que doit le faire le chasseur qui n'est pas sûr que l'objet qui bouge au bout de son fusil, est un animal plutôt qu'un être humain.

Nous croyons que c'est précisément ce qui rend irrecevable le texte de la loi proposée sur l'avortement thérapeutique. Si, encore, on proposait de mettre dans chaque plateau de la balance la vie du fœtus contre celle de la mère, nous pourrions discuter et d'ailleurs, nous y reviendrons. Mais, quand nous proposons un texte qui accepterait de sacrifier une vie fœtale dans le but d'éliminer une cause «qui mettrait certainement ou probablement en danger la santé de la mère», nous croyons que l'argumentation ne fait plus le poids, et rend le texte irrecevable. Je voudrais bien savoir, en effet, qui est capable de répondre à la question suivante: «Qu'est-ce que la santé? Où commence-t-elle? Où finit-elle?»

Les principales indications d'avortement thérapeutique, à ce chapitre, sont surtout d'ordre psychiatrique. Nous connaissons, en vérité, des cas pitoyables pour lesquels nous ne sommes pas indifférents. Avouons cependant que nous sommes ici dans un secteur de la médecine où l'interprétation individuelle est plus facile qu'ailleurs; aussi les psychiatres sont-ils loin d'être unanimes.

Les tenants de l'avortement thérapeutique se targuent de résultats alléchants, s'ils ont la prudence de questionner leurs patientes dans l'euphorie des quelques semaines qui suivent l'évacuation de leur fardeau. Mais, ils seraient bien sages de les revoir, ces patientes, quelques années plus tard alors que se sera possiblement développé chez plusieurs d'entre elles, un complexe de culpabilité difficile à vaincre. La psychose après l'accouchement est reconnue de tous, mais l'avortement thérapeutique n'est pas une panacée et n'élimine pas la possibilité de psychose post-abortive tout aussi sérieuse que l'autre.

N'y a-t-il pas danger encore que, profitant du texte de la loi que l'on discute, on ne recourt trop facilement à l'avortement thérapeutique chez la mère célibataire pour qui, plus que toute autre, une grossesse constitue un choc psychologique sinon psychique.

Autre indication d'avortement thérapeutique dont on fait beaucoup état: c'est la possibilité de sérieux troubles de développement fœtal causés par l'ingestion de certains médicaments ou par certaines infections à virus. La rubéole contractée par une femme enceinte dans les seize premières semaines de grossesse en est l'exemple le plus typique et le plus connu. Nous tenons à souligner que ce

[Interpretation]

stating that meanwhile, doubt compels us to abstain or hold back, just like the hunter who is not sure as to the nature of the object at which he is aiming and wonders whether it is an animal or a human being. We believe that this is precisely what makes the text of the bill dealing with abortion unacceptable. If, even, it were proposed to weigh the life of the foetus as against the life of the mother, the discussion would be possible and furthermore, we are going to come back to this. But when we propose a text that would accept to sacrifice a foetal life in order to eliminate a cause that would "certainly or probably endanger the health of the mother", we feel the argument is one that does not carry any weight and makes the test acceptable. I would like to know, in fact, who can reply to the following question: "What is health? Where does health begin and where does it end?"

The main indications in regard to therapeutic abortion under this heading are especially of a psychiatric nature. We know of many pitiful cases and we are not indifferent to these cases. However, we must admit that this is a field of medicine where individual interpretation is easier than elsewhere and also that psychiatrists are far from being unanimous on this subject.

Those doctors who support therapeutic abortion claim attractive results when careful enough to question their patients during the period of euphoria in the weeks following the expulsion of the foetus. But they would be wise to see these patients again a few years later when a feeling of guilt may possibly have developed amongst several of these women a guilt complex that is difficult to overcome. Every one recognizes there is a psychosis after delivery, but therapeutic abortion is not a panacea and does not eliminate the possibility of a post-abortion psychosis that is every bit as serious as the other.

Is there not a danger, moreover, that taking advantage of the text of the bill now being discussed, might we have recourse too easily to therapeutic abortion for the single mother for whom, more than for any other woman, a pregnancy is a psychological if not a psychic shock.

Another indication of therapeutic abortion that is discussed to great extent is the possibility of serious trouble in foetal development caused by the taking of certain kinds of medicine or because of certain virus infections. A pregnant woman who catches German measles during the sixteen first weeks of her pregnancy is the most typical and the best known example. We want to emphasize that

[Texte]

phénomène est rare et le sera de plus en plus avec l'apparition récente sur le marché d'un vaccin préventif inoculé à la mère. Et même s'il survient, la fréquence de malformations n'est pas aussi grande qu'on le croit généralement. Et j'ai en appendice, pour le prouver, un article tiré du *Lancet* 1966, une revue d'Angleterre. C'est donc dire que d'accepter systématiquement cette indication d'avortement thérapeutique, équivaut à accepter d'éliminer de sang-froid au moins 75 p. 100 d'enfants sains chez qui cet accident survient. C'est, en réalité, un lourd sacrifice...

Quant à évacuer délibérément le fœtus conçu au cours d'un viol, nous remarquons que cette indication n'est pas unanimement reconnue et que, en plus, elle donne l'impression de vouloir régler des problèmes sur le dos de l'innocent qui a le malheur d'être à la fois le plus faible.

Passons maintenant en revue les principales indications d'avortement thérapeutique, celles qui sont effectuées dans le but d'éliminer une cause *qui mettrait en danger, cette fois, la vie de la mère*. Le médecin est alors mis en face d'un dilemme terrible que vous comprenez facilement, aussi se trouve-t-il un peu moins malheureux d'avoir à ses côtés un législateur compréhensif.

Heureusement, la médecine progresse à pas de géants, et relègue au second plan des indications autrefois impératives de recourir à l'avortement thérapeutique. Il est important d'abord de distinguer sur la sévérité des maladies en cause. Si l'on est en présence de maladies terminales susceptibles d'entraîner la mort à courte échéance chez la mère, plus d'une femme voudra à ce moment se surpasser, sera heureuse avant de mourir de se perpétuer dans un autre: le médecin devra alors, je le crois fermement, respecter ce désir de dépassement. C'est ce qui se produit, par exemple, dans le cas de cancer avancé du col ou dans l'atrophie jaune aiguë du foie.

Par contre, dans les cas de cancer du col à un stage moins avancé, pourquoi une intervention superflue et dangereuse quand radiothérapie et chirurgie sont possibles et tout aussi efficaces? De même, les grossesses sont moins dommageables aujourd'hui pour les patientes porteuses d'insuffisance rénale consécutive soit à une néphrite chronique ou à une pyélonéphrite rebelle au traitement médical et s'aggravant à mesure que la grossesse avance. Admettons franchement que le

[Interprétation]

this phenomenon is a rare one and will become more and more rare because of the recent appearance on the market of a preventive vaccine that can be given to the mother. And even if it does occur, the incidence of malformations is not as great generally believed.

As an Appendix to my brief, I have an article from the *Lancet* 1966 an English medical journal, to prove this. Therefore, this means that the systematic acceptance of this indication of therapeutic abortion amounts to accepting in cold blood to eliminate, at least, 75 p. 100 of healthy, children amongst whom this accident occurs. This is truly a heavy sacrifice.

With regard to the deliberate removal of the foetus conceived during a rape, we point out that this indication is not unanimously recognized and that, furthermore, it gives the impression of attempting to settle problems at the expense of the innocent person who unfortunately is also the weakest person involved.

Let us now review the main indications of therapeutic abortion, that are carried out those with the purpose of eliminating a cause *that would, in this case, endanger the life of the mother*.

The doctor then faces a terrible dilemma that you will readily understand, and it makes him somewhat less unhappy to have the support of an understanding legislator.

Fortunately, medicine is progressing with gigantic strides, and indications that were formerly imperative for having recourse to therapeutic abortion have become of minor importance. First of all, it is important to differentiate between the seriousness of the illnesses involved. If we are dealing with terminal diseases likely to cause the death of the mother within a brief lapse of time, more than one woman would then want to surpass herself and be glad to perpetuate herself before dying by giving birth to a child. I firmly believe that the physician should respect this desire of hers respecting the child's life. That is what happens for instance, in the case of an acute cancer of the cervix or of acute yellow atrophy of the liver.

On the other hand, in the case of a less advanced cancer of the cervix, should a superfluous and dangerous operation be conducted when radiotherapy and surgery are possible and certainly as effective? Likewise, pregnancies are now less dangerous to women who have been suffering from renal deficiency following either a chronic nephritis or a pyelonephritis that does not react to medical treatment and that gets worse as the pregnancy develops. Let us frankly the availability of

[Text]

voisinage des néphrologues et le recours à la dialyse, même si elle est rare durant la grossesse, permettent aujourd'hui de rendre ces grossesses à terme ou au moins au stade de viabilité fœtale.

Les maladies cardio-vasculaires associées à la grossesse, elles aussi, comportent un pronostic meilleur depuis que la cardiologie a connu des progrès fantastiques, ceux-là qui sont les mieux connus du public, à la suite d'une publicité sans précédent. Nous admettons cependant que certaines sténoses mitrales inopérables amènent des réserves. Que reste-t-il en fait? Une poignée de cas qui se feront de plus en plus rares à mesure que la médecine profitera des techniques modernes.

Vaut-il la peine pour autant de risquer de chambarder par une loi, un état d'équilibre réalisé dans le statu quo? Vaut-il la peine de mettre en branle un mécanisme qui risquerait de dépasser les intentions du législateur? Ne vaudrait-il pas mieux entreprendre une consultation élargie, accessible à toutes les couches du corps médical, associations médicales, spécialistes, etc.? Ne vaudrait-il pas mieux aller apprendre à ce niveau, toutes les distinctions susceptibles de bonifier la loi avant même sa parution?

Nous ne doutons pas des bonnes intentions du législateur, d'ailleurs c'est ce qui nous incite à communiquer avec lui. Peut-être espère-t-il par le projet actuel, mettre un frein à la quantité insoupçonnée d'avortements illégaux rencontrés au pays. Il ne peut cependant y compter tellement, puisque la loi n'est pas assez libérale pour l'espérer.

D'ailleurs, le serait-elle qu'on note avec surprise que dans les pays où on a libéralisé la loi sur l'avortement: je pense à la Hongrie, à la Tchécoslovaquie et à la Pologne et je vous fais grâce des chiffres qu'on retrouve dans le *«Journal of the American Medical Association»* avril 1961, ces mesures n'ont affecté en rien le taux d'avortements criminels.

• 0950

Il y a quelques années, vous abolissiez la peine de mort, par humanisme et pour ne pas rendre irréparables des erreurs judiciaires possibles. Les médecins, eux aussi, considèrent avec effroi cette infailibilité qu'on leur confère, en leur permettant de décider du droit de vie ou de mort sur un être innocent et sans défense.

Le premier souci du législateur est de protéger les citoyens par les lois qu'il édicte. Il est donc normal qu'il se penche avec prédilec-

[Interpretation]

meophoslogists and the use of admit that dialysis, even it is rare during the course of pregnancy, to complete a pregnancy by delivery or at least to bring it to the stage of foetal viability.

Cardio-vascular diseases associated with pregnancy are also more easily prognosticated since cardiology has developed at a fantastic rate. These are best known to the public thanks to unprecedented publicity. We do admit that certain mitral stenoses that cannot be operated on give rise to certain reservations. What does that leave? A handful of cases that will become fewer and fewer as medicine benefits from modern techniques.

Is it worthwhile risking to upset through an Act a state of equilibrium brought about under the status quo? Is it worthwhile setting up a mechanism that would risk going beyond the intentions of the legislator? Would it not be better to have broader consultations, accessible to all the strata of the medical profession, to medical associations, specialists, and so on? Would it not be better to find out what we can at that particular level, all the distinctions that may improve the legislation before it is adopted?

We do not question the good intentions of the legislators. That is why we wanted to get in touch with the legislators. Perhaps legislators hope, through this bill, to put to limit the untold number of illegal abortions which are now performed throughout the country. However, they should not have too great expectations since the bill is not sufficiently liberal to hope to achieve this.

Moreover, even if it were liberal enough, we find that where abortion laws have been liberalized—I am thinking of Hungary, Czechoslovakia and Poland, and I will not quote the figures found in the *Journal of the American Medical Association* of April 1961—these laws have not changed the figures relating to criminal abortions at all.

Some years ago, you abolished the death penalty out of humanitarianism and so that judicial errors would not be made. Physicians also consider with fear this infallibility conferred upon them by allowing them to decide whether or not an innocent and defenceless being has the right to live.

The legislator's prime concern is to protect the citizens through the laws he enacts. Therefore, it is normal for him to show the

[Texte]

tion sur les plus défavorisés, sur les plus faibles, sur le plus faible d'entre tous, le fœtus pourtant déjà légalement accepté dans la société puisque d'après les articles 338 et 608 du Code Civil il possède déjà des droits successoraux.

Nous vous demandons donc humblement de rayer du bill omnibus l'article concernant l'avortement, quitte à le présenter plus tard, modifié après consultation élargie avec les différents rouages médicaux du pays.

Et si, par hasard, nous ne reflétons pas l'opinion de la majorité, nous vous demanderions de considérer comme essentiel que les comités consultatifs formés à cet effet, soient acceptés par le Collège des Médecins des différentes provinces ou par un organisme national tel que la *Canadian Medical Association*.

Nous insistons aussi pour que le texte de loi prévoit la sauvegarde de la liberté individuelle des médecins à l'effet que si l'un d'eux refuse de recourir à l'avortement thérapeutique dans un cas donné et ce, pour quelque raison que ce soit, il n'encourt pas de procédures légales.

Merci de votre bonne attention.

The Chairman: Thank you, Dr. Legare. Are there any questions?

Mr. Deakon: Mr. Chairman, may I first ask the witness to give us a definition of a therapeutic abortion.

Dr. Légaré: L'avortement thérapeutique, par définition, est l'interruption délibérée d'une grossesse avant la période de viabilité du fœtus, c'est-à-dire avant que le bébé ne soit viable. La date se situe aujourd'hui autour de la 24^e semaine de la grossesse.

The Chairman: Are there any further questions?

Mme MacInnis (Vancouver-Kingsway): Je vais poser mes questions en anglais parce que je peux faire plus de nuances dans ma langue natale.

You have certain beliefs on which you base your ideas in regard to abortion. This is true, is it not? You have certain principles and ideas, which are basically religious ones, on which you base your ideas on abortion. I grant you have the right to hold these beliefs and to exercise them. However, are you aware of the fact that there is a very, very large number of people in Canada who do not share these beliefs and who have very different ideas in regard to this whole matter of abortion?

[Interprétation]

greatest concern for the most ill-favoured, the weakest, the weakest of us all, namely *the fœtus*, which is already legally accepted in society since according to sections 338 and 608 of the Civil Code it is already entitled to inheritance rights.

We therefore ask you to humbly strike the clause dealing with abortion from the omnibus bill, though it might be submitted later on, amended after consultation with the different medical circles in the country.

If, per chance, we do not reflect the opinion of the majority, we would request you to consider as essential that the advisory committees set up to that end, be accepted by the College of Physicians of the different provinces or by a national body such as the Canadian Medical Association.

We would also insist that the text of the bill protect the individual freedom of the physicians so that if one of them refuses to have recourse to therapeutic abortion in a given case, for any reason whatsoever, he would not be subject to any criminal proceedings.

Thank you very much for your attention.

Le président: Merci docteur Légaré. Y a-t-il des questions?

M. Deakon: Monsieur le président, puis-je demander au témoin de nous donner une définition de l'avortement thérapeutique?

Dr. Légaré: Therapeutic abortion by definition is the deliberate interruption of pregnancy before the period of viability of the foetus, that is, before the child is viable. The date is now judged to be around the 24th week of pregnancy.

Le président: D'autres questions?

Mrs. MacInnis (Vancouver Kingsway): I will put my questions in English because I think I express myself more accurately in English than in French.

Vous avez certaines croyances sur lesquelles vous appuyez vos idées au sujet de l'avortement thérapeutique. C'est vrai, n'est-ce pas? Vous avez certains principes et idées qui sont à la base religieuse et qui servent de fondement à vos opinions sur l'avortement. Vous avez le droit d'avoir ces croyances et de les pratiquer. Mais êtes-vous au courant du fait qu'il y a un très grand nombre de gens au Canada qui ne partagent pas ces croyances et qui ont des idées très différentes sur la question d'avortement?

[Text]

I believe the Gallup poll has shown that this applies to a majority of the Canadian people. On what basis would you deny these fellow Canadians the right to act on beliefs which are quite different and quite opposed to your own?

• 0955

Dr. Légaré: Il est sûr que tout le monde est influencé par ses croyances religieuses. Je le suis, je pense que vous l'êtes, c'est normal. Je ne sais pas jusqu'à quel point, mais je sais que j'ai essayé d'être objectif et j'ai déclaré au départ que je ne voulais pas utiliser d'arguments religieux, et si vous remarquez, ceux que j'ai apportés ne sont nullement de nature religieuse. Et, il faut évidemment s'en garder, parce que personne ne peut discuter d'un problème semblable si on fait intervenir le facteur religieux dès le départ.

En fait, l'argument peut se retourner contre celui qui l'avance, et il devient impossible d'en sortir. Mais je pense que vous devez admettre que dans cet exposé, les arguments, sont purement d'ordre médical et humain.

Mrs. MacInnis (Vancouver Kingsway): I cannot accept that because I know there are people who honestly believe, as you do, that anything to do with abortion has to do with crime and murder. A great many Canadians do not believe that. In my opinion, the majority do not believe that.

No one is suggesting that people who believe it is crime and murder should have anything to do with the laws on abortion. By what right do you say that these other people cannot carry out their beliefs under liberalized abortion laws? I just cannot get at the basis of that. No one is saying that you should be compelled to have anything to do with abortion. On what basis do you say that those people who believe it is right to plan families and not have these things happen by way of accidents—where do you get the authority—should be denied the right to carry out their beliefs with a liberalized law?

Mr. Woolliams: On a point of order, Mr. Chairman.

The Chairman: Mr. Woolliams on a point of order.

[Interpretation]

Une enquête Gallup a démontré que cela s'applique à la majorité des Canadiens. Sur quel principe vous appuyez-vous pour nier ces Canadiens, leur droit d'agir selon des croyances qui sont différentes et même opposées aux vôtres?

Dr. Légaré: It is certainly true that everyone is influenced by religious beliefs. I am, and I believe you are too. It is normal. Up to what point I do not know, but I do know that I have attempted to be objective and I stated at the beginning that I did not want to use religious arguments, and if you check you will see that those I used were not of a religious nature. No one can discuss a matter of this kind unless you set aside the religious beliefs at the outset.

In fact, the argument may be turned around against the person using it, and it then becomes impossible to extricate oneself. But I think you must admit that in this brief the argument is purely of a medical nature and based on human consideration.

Mme MacInnis (Vancouver-Kingsway): Je ne peux pas accepter ce point de vue parce que je sais qu'il y a des gens qui croient très honnêtement, comme vous, que tout ce qui a trait à l'avortement relève du crime et du meurtre. Un grand nombre de Canadiens y croient. A mon avis, la majorité des gens n'y croit pas. Personne ne suggère que les gens qui croient que c'est un crime et un meurtre devraient avoir quelque rapport avec les lois sur l'avortement. De quel droit dites-vous que ces gens ne peuvent conserver leurs croyances s'il y a des lois libéralisatrices sur l'avortement? Je ne peux tout simplement pas comprendre cette affirmation.

Personne ne dit que vous devriez être obligés à vous engager dans la question de l'avortement.

Sur quoi vous appuyez-vous pour dire que les gens qui croient qu'il est juste de limiter les familles et de ne pas avoir ces accidents, ne devraient pas avoir le droit de maintenir leurs croyances sous une libéralisation de la Loi? D'où tenez-vous cette autorité?

M. Woolliams: Sur cette question d'ordre.

Le président: Monsieur Woolliams, une motion d'ordre.

[Texte]

Mr. Woolliams: The witness has come here in his capacity to give certain evidence and, with the greatest respect to the distinguished lady member, I think the question is somewhat argumentative. I think we are all aware that he is expressing a medical viewpoint. It may be tempered by some of his environment, but I think the question is rather argumentative. We might have a witness tomorrow who will take another viewpoint when you put the same question to him. The answer is probably obvious, but I think it is argumentative.

Mrs. MacInnis (Vancouver Kingsway): Of course it is argumentative but I thought one was permitted to bring up different points of view in this Committee. It is permitted in most committees I have been in.

The Chairman: Mrs. MacInnis, I do not want to go through this ritual again of lecturing the Committee on the type of evidence the witness is supposed to give. For the benefit of those members who were not present at the prior meeting, we agreed—I said it before and I will say it again—to have a maximum of six witnesses.

These witnesses will give their medical and administrative viewpoint on the proposed law which is now before us. They are not to give their philosophical concepts. I have granted a lot of latitude. In my opinion the doctor has given his philosophical viewpoint. Mrs. MacInnis has asked questions which I think were elicited by the fact that this evidence was given.

I would again like to remind the Committee members that I want them to stick to the actual technical aspects of this bill. If we do this I think we will adhere to the resolution that the Committee passed last week.

Mrs. MacInnis (Vancouver Kingsway): Thank you, Mr. Chairman. I was not here, so I did not get this explanation. Henceforth I shall adhere to the technical aspects.

The Chairman: Have you completed your questioning, Mrs. MacInnis?

Mrs. MacInnis (Vancouver-Kingsway): Yes, for now. I will come back later.

M. Rondeau: Merci, monsieur le président. J'aimerais que le docteur Légaré nous explique davantage ses indications de ce matin à

[Interprétation]

M. Woolliams: Le témoin est venu nous donner un certain témoignage et j'ai énormément de respect pour la dame, mais je pense que la question est quelque peu une question de raisonnement.

Nous sommes tous conscients que le témoin exprime un point de vue médical. Ce point de vue pourrait être modéré par quelqu'un de son milieu mais je crois que le sujet porte quelque peu à controverse. On pourrait avoir un témoin demain qui donnerait un point de vue différent sur la même question. La réponse est probablement claire, mais la question porte à controverse.

Mme MacInnis (Vancouver-Kingsway): On peut tous avoir des points de vue différents mais je croyais qu'on avait le droit de soumettre différents points de vue au Comité comme dans plusieurs comités auxquels j'ai participé.

Le président: Je ne veux pas répéter ce rite, madame MacInnis, je ne veux pas exposer au Comité le genre de témoignage qu'un témoin est sensé donner. Mais les gens qui n'étaient pas présents à la réunion précédente, nous nous sommes mis d'accord, je l'ai déjà dit et je le redis, à ce qu'il y ait un maximum de six témoins.

Ces témoins donneront leur point de vue médical et administratif sur le projet de loi que nous étudions. Ils ne doivent pas nous donner leurs idées philosophiques. J'ai accordé une grande marge—A mon avis, le médecin nous a donné un point de vue philosophique. Madame MacInnis a posé des questions qui ont été éclairées par le témoignage.

J'aimerais rappeler aux membres du Comité que je veux que vous vous en teniez aux aspects techniques de cette Loi. Si nous suivons cette règle, je crois que nous observerons la résolution adoptée par le Comité, la semaine dernière.

Mme MacInnis (Vancouver-Kingsway): Merci, monsieur le président. Étant donné que je n'y étais pas, je n'avais pas reçu cette explication. Je m'en tiendrai à l'aspect technique à partir de maintenant.

Le président: Est-ce tout, madame MacInnis?

Mme MacInnis (Vancouver-Kingsway): Oui, pour le moment. Je reprendrai plus tard.

Mr. Rondeau: Thank you, Mr. Chairman. I would like Dr. Légaré to give us some further explanation regarding the indications he gave

[Text]

l'effet que, dans certains cas, l'avortement thérapeutique pourrait être accepté.

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Alors, si j'ai bien compris l'explication, dans certains cas, après avoir éliminé toutes les autres possibilités, l'avortement thérapeutique est d'une nécessité absolue. Dans quels cas prévoyez-vous qu'il doit nécessairement y avoir avortement thérapeutique? Je crois que cette question ne porte pas sur les aspects philosophiques, mais sur les aspects techniques.

Dr. Légaré: J'ai touché à ces questions tout à l'heure, et évidemment nous pouvons difficilement juger de la valeur de notre exposé, mais j'ai fait très attention de m'en tenir à la question dans le relevé des indications. Quant aux indications, je crois que la comparaison de la vie du fœtus avec la santé de la mère dans certains domaines particulièrement discutables, est difficile à faire. J'accepterais l'avortement thérapeutique dans certains cas, quand il y a vie contre vie.

J'ai mentionné, par exemple, certaines sténoses mitrales inopérables, certains cas d'insuffisance rénale, surtout celles qui viennent à la suite de néphrites chroniques, non pas celles qui viennent à la suite de phénomènes aigus, qu'on appelle «glomérulo-néphrites aiguës», et qui se soignent assez bien avec les moyens de la médecine moderne.

Mais, comme je le disais, ces cas sont de plus en plus rares, parce que la médecine progresse, et on trouve des médicaments plus puissants pour régler ces problèmes sans qu'on doive avoir recours à l'avortement thérapeutique.

M. Rondeau: Docteur Légaré, selon vos connaissances médicales, y a-t-il des cas d'avortement thérapeutique d'une nécessité absolue?

Dr. Légaré: Je dois dire que je n'en ai pas rencontrés, mais je n'ai qu'une petite expérience: il n'y a que 13 ans que je pratique l'obstétrique. Mais, il reste que je conçois qu'il puisse y avoir des cas à discuter et, je reviens à ce sujet-là, je ne sais pas si cette suggestion de changer la loi est politique ou non, mais il me semble qu'il ne vaut pas la peine de faire un chambardement, peut-être risqué, alors que déjà les cas graves sont couverts.

M. Rondeau: Au cours de vos années de pratique, vous est-il arrivé d'être obligé de recourir à l'avortement thérapeutique comme moyen ultime pour sauver la vie de la mère?

[Interpretation]

this morning to the effect that, in certain cases, therapeutic abortion might be acceptable.

If I understand the explanation correctly, in certain cases, after having eliminated all other possibilities, therapeutic abortion is absolutely necessary. In what cases do you foresee that these must necessarily be therapeutic abortions? I believe that this question deals with the technical rather than the philosophical aspects.

Dr. Légaré: I mentioned these matters a while ago, and of course, it is difficult to judge the value of our brief, but I was very careful to stick to the question in so far as the indications are concerned. As to these indications, I think that the comparison of the life of the foetus against the health of the mother is difficult to make in certain particularly questionable fields. I would accept therapeutic abortion in certain cases, when it is one life against another. For instance, I mentioned a certain inoperable mitral stenoses, certain cases of renal insufficiency, especially those following chronic nephrites, and not those which are caused by acute phenonema, which are called acute glomurelonephrites, which can be fairly well treated with modern medication.

But, as I stated, these cases should become more and more rare, because medicine is developing and progressing and we are finding more potent medication to treat these illnesses without having to have recourse to therapeutic abortion.

Mr. Rondeau: Dr. Légaré, according to your medical knowledge, are there cases of therapeutic abortion which are absolutely necessary?

Dr. Légaré: I must say that I have never come across any, but I do not have too much experience in this. I have been practicing obstetrics for 13 years only. However, I think there could be doubtful cases, and to come back to that subject, I do not know if this suggestion to amend the Act is prudent or not, but it seems to me that it is not worthwhile upsetting the legislation, which might be risky, when the serious cases are covered at the present time.

Mr. Rondeau: In your experience has it ever happened that you had to perform therapeutic abortion as the ultimate means of saving the life of the mother?

[Texte]

Dr Légaré: Non, pas personnellement. Évidemment, je reviens au témoignage de M^{me} MacInnis, je suis probablement, influencé, et même en dernier ressort, je n'ai pas le droit d'y recourir. Je multiplie les «autres» moyens pour régler ces problèmes. En fait, le problème se discute avec des statistiques, je pense. Qu'on compare les statistiques d'un milieu où on a recours à l'avortement thérapeutique avec celles d'un milieu où on n'y a pas recours, par exemple, et qu'on regarde les résultats; c'est là qu'on pourra juger, selon que les résultats sont égaux, supérieurs ou inférieurs. Cela se prouve à coup de chiffres et non pas à coup de philosophie, vous avez raison. Mais, ce sont des cas qui sont très rares, et qui...

M. Rondeau: Le comité de l'avortement thérapeutique qui sera chargé de décider dans quels cas il y aura avortement, ne pourrait-il pas encore être sujet à une erreur médicale?

Dr Légaré: Cela est sûr, tout être humain est sujet à une erreur médicale, et c'est d'ailleurs ce à quoi je fais allusion à la fin de mon exposé: On a aboli la peine de mort à cause de la possibilité d'erreur judiciaire et par humanisme. Nous, de notre côté, devons être au moins aussi humbles que les juges et accepter que nous pouvons nous tromper, que même un comité peut se tromper. Et il reste qu'une vie en dépend; on peut en discuter, mais, pour nous, une vie en dépend dès le départ.

M. Rondeau: Le progrès médical amène-t-il l'avortement ou ne l'éloigne-t-il pas plutôt? Lequel?

● 1005

Dr Légaré: Évidemment, il y a une foule d'indications, dont certaines que je n'ai même pas mentionnées, qui ont été reléguées au second plan. Ainsi, les vomissements incoercibles, les vomissements du début de la grossesse étant rebelles à toute médication, les patientes pouvaient en mourir, faire une atrophie aiguë du foie, mais cela n'arrive plus à cause des sérums et de tous les moyens que nous avons pour équilibrer une patiente. Ces indications sont reléguées au second plan.

D'autres indications que j'avais mentionnées sont moins importantes aujourd'hui, à cause justement du progrès. Au point de vue cardiologie, par exemple, les indications sont beaucoup moindres qu'auparavant. C'est

[Interprétation]

Dr. Légaré: No, not personally. I come back to the evidence of Mrs. MacInnis—I am probably influenced, and in the final analysis, I do not have the right to resort to this. I try to apply all the “other” means to solve these problems. But I think that, in fact, the problem can be discussed on the basis of statistics. Let us compare the statistics of places where therapeutic abortion is practised with those of places where it is not practised and check the results.

This is where we shall be able to judge, according to whether the results are identical, higher or lower. This can be proven by figures and not through philosophical arguments, you are right. But these are very infrequent cases, which...

Mr. Rondeau: The therapeutic abortion committee that will have to decide in what cases there should be an abortion, could not this committee still be subject to medical error?

Dr. Légaré: Yes, of course. Any human being can make a medical error, and that is why at the end of my brief I mentioned that the death penalty has been abolished because of the possibility of a legal error and out of humanitarianism. We ourselves must be at least as humble as the judges and accept that we can make mistakes, that even a committee can make mistakes. And a life is in question. Although we can discuss this subject, for what concerns us, a life is at stake at the very outset.

Mr. Rondeau: Does medical progress call for abortion or does it not rather make it unnecessary?

Dr. Légaré: There are a great number of indications, some that I have not even mentioned, that are now of lesser importance. Take for instance, uncontrollable vomiting, vomiting at the beginning of the pregnancy on which medication had no effect. A woman could die from this or suffer an acute atrophy of the liver but this no longer happens because of serums and all the various means we have to maintain a patient's balance. These indications are no longer of first importance.

There are other indications which I mentioned which are not so important today because of progress. For instance, from the viewpoint of cardiology there are far fewer indications than previously. It is normal, I think, that as

[Text]

normal, je pense, que plus la médecine est avancée, plus elle devient médicale et non chirurgicale.

Mr. Murphy: Doctor, at what stage would you expect the type of abortion contemplated by this legislation to take place. At what stage of pregnancy?

Dr. Légaré: Ce que la législation proposerait, est-ce ce que vous voulez dire?

Mr. Murphy: Would you expect the type of therapeutic abortion about which you are speaking to take place, say, in the first three months of pregnancy or at later stages?

Dr Légaré: Par définition, un avortement thérapeutique laisse le champ libre jusqu'à la date où le bébé devient viable, c'est-à-dire la vingt-septième semaine de grossesse, disons, autour de six mois. Encore, avec l'avancement de la médecine, on peut penser que dans 10 ou 15 ans, cette période sera peut-être rapporté à cinq mois, parce qu'il sera possible de sauver des bébés de plus en plus petits. Mais techniquement parlant, tout le monde est unanime à avouer que plus une grossesse est avancée plus un avortement est risqué, parce qu'il comporte des complications importantes pour la mère. A un point tel qu'après trois mois, par exemple, on propose une technique différente.

Dans les trois premiers mois, on propose ce que tout le monde connaît probablement, un curetage, qu'on comprend la dilatation du col, puis un curetage avec une espèce de petite fourchette qu'on introduit dans l'utérus, et au moyen de laquelle on expulse les débris ovulaires. Après quatre ou cinq mois de grossesse cependant, cette technique étant tellement compliquée, on propose plutôt d'ouvrir le ventre de la mère, d'ouvrir l'utérus, et d'expulser manuellement les débris et de refermer tout cela. Vous voyez que la technique est déjà beaucoup moins simple et c'est celle qui est préconisée dans bien des milieux.

M. Rondeau: Docteur Légaré, à la page 35...

The Chairman: Just a moment please, Mr. Rondeau. Have you finished, Mr. Murphy?

Mr. Murphy: Practically speaking, do you not think that women who wish to take advantage of the proposed provisions in the amendment would take those steps, make their applications to the therapeutic abortion committee in the hospitals, at an early stage of pregnancy, say within the first six weeks?

[Interpretation]

medicine progresses it becomes increasingly medical instead of surgical.

M. Murphy: Docteur, à quel moment de la grossesse l'avortement prévu par la présente mesure législative devrait-il avoir lieu?

Dr. Légaré: Do you mean what the legislation would propose?

M. Murphy: Croyez-vous que le genre d'avortement thérapeutique dont vous parlez se produirait, disons, au cours des trois premiers mois de la grossesse ou plus tard?

Dr. Légaré: By definition, therapeutic abortion can be performed at any time until the child becomes viable, that is the 27th week of pregnancy, or about six months. But with the advance of medicine, we may expect that in 10 or 15 years this period will perhaps be reduced to five months because it will be possible to save younger babies. But technically speaking, everyone will agree that as a pregnancy progresses there are more and more risks in abortion for the mother. This is evident to the point that after three months, for example, a different technique is used. In the first three months curettage is the usual method, this involves expanding the cervix, then a curettage with a sort of small fork which is introduced into the uterus and with which the ovular remains are expelled. But at four or five months of pregnancy, this technique is so complicated, that it is advisable to open the mother's abdomen, to open the uterus, and manually expell the remains and then close everything up again. As you can see, this technique is far more complicated and it is the one that is advocated in many places.

Mr. Rondeau: On page 35, Dr. Légaré...

Le président: Un moment, s'il vous plaît, monsieur Rondeau. Est-ce que vous aviez fini, monsieur Murphy?

M. Murphy: Sur le plan pratique, ne pensez-vous pas qu'une femme qui veut profiter des dispositions prévues par la modification pourrait faire cette démarche, faire une demande au Comité des avortements thérapeutiques dans les hôpitaux, au début de la grossesse, disons, pendant les six premières semaines?

[Texte]

Dr Légaré: Si la loi est adoptée, rien ne l'en empêchera, en fait. Ce sera au comité de l'avortement thérapeutique de juger de la valeur de son argumentation, des indications qu'elle apporte. Dans des milieux où l'avortement thérapeutique est permis, ce n'est pas toujours la patiente, loin de là, qui demande l'avortement, c'est souvent le corps médical lui-même qui le propose. Il est sûr que cela se passera ainsi si la loi est adoptée. Mais, et c'est à ce sujet que je faisais une recommandation à la fin de mon exposé, il faut tout de même que le gouvernement s'assure que ces comités de l'avortement thérapeutique constituent un rouage qui va éliminer le plus possible les erreurs humaines. De plus, je ne sais pas si la composition du comité est prévue dans la loi.

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Je ne vois pas que tous les hôpitaux aient nécessairement un tel comité; qu'il y en ait pour certaines régions, des comités acceptés par des organismes gouvernementaux, les collèges de médecins de la province ou encore par un organisme national, pour qu'on ne risque pas trop que; dans certains milieux, les consultations soient trop faciles et que les erreurs de jugement se multiplient. Cela répond-il à votre question?

The Chairman: Mr. Woolliams?

Mr. Woolliams: Doctor, I want to ask you a few questions on a technical basis. Before I do that I will preface them by reading a section that has been in the Code for some time, so it is not being changed by this legislation. It defines when a child becomes a human being. Section 195. (1) reads:

195. (1) A child becomes a human being within the meaning of this Act when it has completely proceeded, in a living state, from the body of its mother whether or not

(a) it has breathed,

(b) it has an independent circulation, or

(c) the navel string is severed."

From a medical point of view would you agree with the definition that exists in the Code? This was in the Code before there were any changes under the new bill.

• 1010

M. Légaré: Du point de vue médical, non. C'est une implication légale ici, et c'est normal; on retrouve ceci dans le Code civil. Mais, définitivement, l'enfant, même dans le

[Interprétation]

Dr. Légaré: If the Act is adopted nothing can prevent her from doing this, and it would be up to the therapeutic abortion committee to decide on the merits of her case, of the indications which she mentions. In those places where therapeutic abortion is permitted, it is not always the patient who asks for it, far from it, it is often the medical body itself which proposes this. It is certain that this will be the case if the Act is adopted. But, and it is in this connection that I made a recommendation at the end of my brief, the government must ensure that these therapeutic abortion committees are set up in such a way as to eliminate human error as much as possible. Moreover, I do not know if provision has been made in the Act for the composition of the committee.

I do not think that all hospitals will necessarily have such committees. There may be some for certain regions and these committees must be accepted by government bodies, the Colleges of Physicians of the provinces or by a national organization, so that there will be no risk that in certain places consultation will be too easy and there may be too many human errors. Does this reply to your question?

Le président: Monsieur Woolliams?

M. Woolliams: Docteur, je voudrais vous poser quelques questions d'ordre technique mais, avant de le faire, je voudrais vous lire un article qui figure au Code depuis quelque temps, qui n'est pas modifié par ce projet de loi et qui définit le moment où un enfant devient un être humain. Le paragraphe 1 de l'article 195 se lit:

195.(1) Un enfant devient un être humain, au sens de la présente Loi, lorsqu'il est complètement sorti vivant du sein de sa mère, qu'il ait respiré ou non, qu'il ait ou non une circulation indépendante, ou que le cordon ombilical soit coupé ou non.

Du point de vue médical, êtes-vous d'accord avec la définition qui existe dans le Code criminel. Il s'agissait du Code avant que l'on n'y ait apporté des changements prévus par le nouveau projet de loi.

Dr. Légaré: From a medical point of view, no. This is a legal implication, and this is normal. We find this in the Civil Code also. But, definitely, even in the womb of the

[Text]

sein de la mère, est un être humain. Les diapositives du docteur Jutras traitent de ce sujet. C'est ce que le docteur va prouver médicalement. C'est pourquoi, j'aime autant ne pas m'étendre sur ce sujet.

Mr. Woolliams: If you had your way—and I just want to get your viewpoint—would you change that definition as it now exists? It is the present law whether this bill passes or not.

M. Légaré: Je n'ai pas d'expérience légale: je ne vois pas quelles sont les implications légales possibles, mais d'après mes connaissances, je désirerais certainement que le Code civil s'adapte à la réalité, parce que je trouve que c'est une réalité, que l'enfant dans le sein de la mère est un être vivant. Je ne voudrais pas m'aventurer dans le domaine légal, car je n'ai aucune expérience dans ce domaine. Mais pour la vérité des choses, je le désirerais certainement.

Mr. Woolliams: Perhaps I could put it this way. Just to make sure I understand you clearly, when do you say life begins? What is your position under the Code in that respect? I will define it within the meaning of the Act. According to the law life begins when the child is:

...proceeded, in a living state, ... whether or not

- (a) it has breathed,
- (b) it has an independent circulation, or
- (c) the naval string is severed."

When do you say life begins?

M. Légaré: La vie commence dès le départ, après la conception. J'admets que c'est un être très imparfait, mais vous avez un être vivant qui se développe. Car, il se développe: il passe, en quelques heures, d'une cellule à deux cellules, à quatre cellules, roule dans la trompe et vient se fixer dans l'utérus. C'est un être vivant, issu du spermatozoïde d'un homme et de l'ovule d'une femme.

Donc, dès ce moment-là, c'est, médicalement, un être humain, vivant, mais très imparfait, je le concède; mais, tout est là. D'ailleurs, le docteur Jutras aura des choses très intéressantes à ce sujet.

Mr. Woolliams: If you do not mind, I have a few questions I would like to ask and then I will be finished. Otherwise it will spoil the trend. Do you think in the modern scientific world, particularly in medicine and other fields, that life could begin in a test tube today?

[Interpretation]

mother, the child is a human being. Dr. Jutras' slides deal with this subject. This is what the doctor will prove medically. That is why I would not like to enlarge on it at the present time.

M. Woolliams: Si vous pouviez le faire, est-ce que vous changeriez cette définition telle qu'elle existe présentement, que le bill soit adopté ou non?

Mr. Légaré: I have no legal experience. I do not see what the possible legal implications are, but according to my knowledge, I am certain that I would like the Civil Code to be adapted to reality, because I think it is a reality that the child in the womb of the mother a living being. I would not like to venture into the judicial field, because I have no experience in this field. But for the sake of truth and reality, I would certainly wish this.

M. Woolliams: Alors, je vais poser la question autrement. Je veux être sûr de bien comprendre ce que vous dites, d'après vous, à quel moment la vie commence-t-elle? Quelle est votre attitude en vertu du Code à ce sujet? Voici la définition de la Loi; d'après la Loi,

la vie commence lorsque l'enfant est complètement sorti du sein de sa mère, qu'il ait respiré ou non, qu'il ait une circulation indépendante, que le cordon ombilical soit coupé ou non.

A votre avis, à quel moment la vie commence-t-elle?

Dr. Légaré: True life begins from the very outset, after conception. I admit that it is a very imperfect being, but you have a living being which is developing. Because indeed, it develops: in a few hours, it develops from one to two to four cells, it proceeds through the Fallopian tubes to the uterus and settles there. It is a living being resulting from the union of the male sperm and the female ovum.

Therefore, from a medical point of view, it is then a living human being, a very imperfect one however, I admit, but everything is present. Dr. Jutras will have some very interesting things to tell you in this respect.

M. Woolliams: Si ça ne vous dérange pas j'ai seulement quelques questions à poser, laissez-moi finir, et je ne voudrais pas interrompre mon ordre d'idée.

Croyez-vous que, dans ce monde moderne, la vie pourrait être produite dans une éprouvette dans le laboratoire?

[Texte]

Dr Légaré: Actuellement, je ne le crois pas. Je ne dis pas cependant que c'est une impossibilité absolue. Si on réussit à créer artificiellement le même milieu qui existe dans la trompe, cela pourra peut-être se faire. En fait, il faut la rencontre d'un ovule et d'un spermatozoïde, mais ce qu'il y a de spécifique dans le milieu ambiant, c'est ce qu'on ignore encore. Je ne serais pas surpris que d'ici quelques années, on tente l'expérience. Ce serait peut-être étrange, mais ce serait évidemment une découverte fantastique qui intéresserait tout le monde.

Mr. Woolliams: I will read the old act as it was and then I will read it as it has been amended. I am reading from the top of page 36:

«209. (1) Every one who causes the death of a child that has not become a human being, in such a manner that, if the child were a human being, he would be guilty of murder, is guilty of an indictable offence and is liable to imprisonment for life.

Then we have the exception, which gives legal grounds for a therapeutic abortion where it is to preserve the life of the mother, and many of us believe that as it was interpreted by the courts and followed in Canada it also meant preservation of the health of the mother. I will also read subsection (2) of Section 209:

(2) This section does not apply to a person who, by means that, in good faith, he considers necessary to preserve the life of the mother of a child that has not become a human being, causes the death of the child."

Under the new amendment, forgetting about the lengthy amendment in reference to setting up an abortion committee in an accredited hospital where you have a certificate, Section 209 has been changed. I believe the reason for the change is when a doctor finds in the delivery room that this is necessary for the preservation of the life of the mother, which might also be interpreted for the preservation of the health of the mother. The amendment reads:

"209. (1) Every one who causes the death,...

and then these words are added:

... in the act of birth,...

This means a doctor and without going to the committee and without having a certificate, whether it was an accredited hospital or not:

[Interprétation]

Mr. Légaré: At the present time I do not think so. I do not say that it is an absolute impossibility, because if we succeed in creating artificially the same environment that exists in the Fallopian tubes, this may be possible. In fact, there must be the meeting of a sperm and an ovum, but what the specific conditions in the areas concerned are, we do not yet know. I would not be surprised that the experiment will be made in a few years. It might be strange, but it would obviously be a fantastic discovery that would be of interest to everyone.

M. Woolliams: Je vais lire l'ancienne loi telle qu'elle était, puis je la lirai telle qu'elle a été modifiée. Je commence au début de la page 36.

«209. (1) Est coupable d'un acte criminel et passible de l'emprisonnement à perpétuité, toute personne qui cause la mort d'un enfant qui n'est pas devenu un être humain, de telle manière que, si l'enfant était un être humain, cette personne serait coupable de meurtre.

Et voici l'exception, la réserve pour les avortements thérapeutiques et qui concernent la vie de la mère. Les tribunaux ont interprété cette cause comme comprenant aussi la santé de la mère. Je lirai également le paragraphe (2) de l'article 209:

«209. (2) Le présent article ne s'applique pas à une personne qui, par des moyens que, de bonne foi, elle estime nécessaires pour sauver la vie de la mère d'un enfant non encore devenu un être humain, cause la mort de l'enfant.»

D'après le nouvel amendement, oublions cet amendement vague au sujet d'un comité d'avortement dans un hôpital accrédité, l'article 209 a été modifié. La raison pour ce changement, c'est que lorsqu'un médecin constate que l'avortement est nécessaire pour préserver la vie de la mère, il interprète la clause aussi comme comprenant la santé de la mère, et voici le texte de l'article modifié:

209. (1) Est coupable d'un acte criminel et passible d'emprisonnement à perpétuité, toute personne qui,

puis ces mots ont été ajoutés:

... au cours de la mise au monde, ..

Cela veut dire un médecin et sans avoir fait une demande à un comité, sans avoir un certificat, que ce soit dans un hôpital accrédité ou non,

[Text]

Every one who causes the death, *in the act of birth*, of any child that has not become a human being, in such a manner that, if the child were a human being, he would be guilty of murder,...

Does a legal interpretation of this mean—and I will ask you about the medical point of view later—that a doctor in the delivery room, before the child becomes a human being and whether it is in a living state or not, if it is severed from its mother's body, that from an ethical point of view and irrespective of what their opinions may be that doctors would use Section 209 as amended for therapeutic abortions generally? In this way they would bypass the committee and also bypass the accredited hospital, and then use Section 209 and wait until the mother—as Professor Mewett said—actually goes into labour and then commit the abortion in the act of birth when the foetus is fully developed, although in law it may not have lived.

This section appears at the top of page 35. In other words, if I can make myself clear, by adding "*in the act of birth*" they have legalized abortion. That is when the mother gets into labour pains.

Do you think from your experience that the doctors, if they are going to agree to therapeutic abortions, would use that rather than using the other section where you have a committee which approves it, a certificate is issued and then a doctor is authorized to do it under conditions as set out by law?

Dr Légaré: Voulez-vous spécifier dans quelles circonstances?

Mr. Woolliams: I will read it again.

Dr Légaré: Dans le cas précis dont vous parlez, vous avez dit à la salle d'accouchement?

Mr. Woolliams: Yes, in the delivery room.

Dr Légaré: Vous voulez dire qu'on aurait décidé de faire mourir le bébé pour préserver la vie de la mère?

Mr. Woolliams: Excuse me, Mr. Chairman. I am not receiving the translation.

Dr. Légaré: You mean to kill the baby in the delivery room to preserve the life of the mother?

[Interpretation]

209. (1) Est coupable d'un acte criminel et passible d'emprisonnement à perpétuité, toute personne qui, *au cours de la mise au monde*, cause la mort d'un enfant qui n'est pas devenu un être humain, de telle manière que, si l'enfant était un être humain, cette personne serait coupable de meurtre.

D'après l'interprétation légale, croyez-vous, et je vous demanderai votre point de vue médical plus tard, que du point de vue moral et indépendamment de leurs opinions personnelles, les médecins dans la salle d'accouchement, avant que l'enfant ne devienne un être humain, qu'il soit en vie ou non et que le cordon ombilical soit coupé ou non, utiliseraient généralement l'article 209 modifié pour pratiquer des avortements thérapeutiques? De cette façon, ils éviteraient le comité ainsi que l'hôpital accrédité, utiliseraient ensuite l'article 209 et attendraient jusqu'à ce que la mère comme l'a dit le Dr Mewett, ait vraiment ses douleurs, puis pratiqueraient l'avortement au cours de la mise au monde lorsque le foetus est pleinement développé, bien que juridiquement l'enfant n'a pas encore vécu.

Vous trouverez cela au haut de la page 35. En d'autres termes, en ajoutant «au cours de la naissance, au cours de la mise au monde», ils ont rendu l'avortement légal. C'est au moment où la mère commence à avoir les douleurs.

D'après votre expérience, croyez-vous que si les médecins admettent les avortements thérapeutiques, ils se serviraient de cette disposition plutôt que de l'autre article de la loi où il est question de faire approuver l'avortement par un comité, d'obtenir un certificat prouvant que l'avortement s'est effectué selon les dispositions prévues par la loi?

Mr. Légaré: Will you please state clearly in what circumstances you mean?

M. Woolliams: Je vais vous le lire de nouveau.

Mr. Légaré: In the specific case you were mentioning, you said in the delivery room?

M. Woolliams: Oui, dans la salle d'accouchement.

Mr. Légaré: You mean that it was decided that the baby would be killed to save the life of the mother?

M. Woolliams: Je regrette, monsieur le président, mais je ne reçois pas l'interprétation.

Dr Légaré: Vous voulez dire de tuer le bébé dans la salle d'accouchement, pour préserver la vie de la mère?

[Texte]

Mr. Woolliams: Yes. Under the same circumstances would they go beyond that and use that section as amended? Under the other amendment which provides that where a therapeutic committee meets—that is, of doctors—and certifies that it be legal to create a miscarriage because of a female's health or to preserve the life of the mother, would they use this Section instead of going to the committee?

Would they wait until the actual time the woman is in labour and use it then, rather than go through the rigmarole—and that may be the word—or the problem of having a committee certify it? Do you think doctors would go that far?

Dr Légaré: En fait, c'est la difficulté de faire des lois. Dès que les législateurs font une loi en bonne conscience, il est certain que quelqu'un essaiera de trouver les faiblesses de ce texte. C'est fort possible que cela se produise. En fait, la difficulté pour le législateur, c'est de faire une loi qui, textuellement, soit bien structurée, pour éviter les abus d'un côté comme de l'autre. Ce n'est pas une impossibilité. La tentative pourrait être une possibilité, mais je ne sais pas si ce serait un succès sur le plan légal. Je ne connais pas ce domaine-là.

Mr. Woolliams: Fine; thank you very much, doctor, that is the very question I wanted answered and I agree with your deduction. I am sorry to have taken so long. I know my good friend here is dying to ask a question.

M. Rondeau: A l'article 209, on dit: «un enfant qui n'est pas devenu un être humain». Quand pouvez-vous conclure que, médicalement, le fœtus n'est pas un être humain? Jusqu'à quel point la médecine peut-elle actuellement définir un être humain dans le fœtus?

Dr Légaré: C'est logique de parler d'un enfant qui n'est pas devenu un être humain, puisque légalement on définit un être humain comme un enfant séparé de sa mère. Évidemment, je pense que cela ne correspond pas à la réalité; mais, un autre peut penser autrement. Mais, avec preuve à l'appui, on a défini le fœtus dans le sein de la mère comme n'étant pas un être humain. Je me demande comment on explique les recours qu'on fait contre ceux qui font des avortements criminels. Il y a probablement une explication, mais je me demande comment on peut les expliquer.

M. Rondeau: Vous voulez dire que la médecine considère un fœtus comme un être

[Interprétation]

M. Woolliams: Oui. Dans les mêmes circonstances, iraient-ils plus loin pour se servir de l'article modifié? D'après l'autre modification, où on dit que lorsqu'un comité d'avortement thérapeutique,—c'est-à-dire de médecins,—se réunit et certifie qu'il est légal de provoquer un avortement pour préserver la vie ou la santé de la mère, est-ce que l'on utiliserait cet article au lieu de s'adresser au comité?

Est-ce qu'on attendrait jusqu'au moment de l'accouchement au lieu d'aller soumettre le problème à un Comité, lorsque le temps presse? Est-ce que les médecins iraient aussi loin que cela?

Mr. Légaré: This is why it is difficult to make legislation. It is certain that, as soon as the law-makers enact a law in good faith, someone will try to find its weak spots. It is quite possible that the case you state could happen. In fact, this is where the difficulty arises for the legislator, i.e. to have, in terms of the text, a well-formulated law, to avoid abuses on both sides. This is not an impossibility. It might be possible to try this, but I do not know if it would be a success from the legal viewpoint. I am not familiar with that field.

M. Woolliams: Bien. Merci beaucoup docteur. C'est exactement la réponse que je voulais obtenir, et je suis d'accord avec vous. Je m'excuse d'avoir pris autant de temps. Je sais que mon bon ami, ici, se meurt de vous poser une question.

Mr. Rondeau: In Section 209, the following is mentioned: "a child who has not become a human being". When can you conclude, medically, that a foetus has not become a human being? That is, up to what point can medicine determine whether or not a foetus is a human being?

Dr. Légaré: It is logical to speak of a child that has not become a human being because, legally, a human being is defined as a child who is separated from the body of the mother. Of course, I do not think that this corresponds with reality, but others may have different opinions about this. But, with the proof to support the case, the foetus in the mother's womb has been defined as not being a human being. I am wondering how we can explain the changes made against those who perform criminal abortions. There is probably an explanation, yet I wonder how this can be explained.

Mr. Rondeau: You mean that medicine considers a foetus as a human being but that

[Text]

humain, mais que, dans le texte de la Loi, un fœtus n'est pas un être humain. Au point de vue médical, jusqu'à quel point pouvez-vous nous prouver qu'un fœtus est un être humain, afin que l'on sache si la loi est évasive, ou peu précise, ou contraire à la médecine. Jusqu'à quel point pouvez-vous nous prouver qu'un fœtus est un être humain? Je ne parle pas sur le plan légal, je parle du point de vue médical, parce que cette loi regarde la médecine.

Dr Légaré: En fait, je pense qu'on peut très bien le prouver. Il y a des sciences modernes, la génétique par exemple, qui font des pas de géant actuellement. Je ne sais pas depuis quand existe le Code civil, mais on peut penser qu'il y a des textes qui sont dépassés et qui n'ont pas suivi la science moderne. Les notions d'aujourd'hui en médecine ne seront peut-être pas les mêmes.

Par exemple, je disais tout à l'heure qu'on fixe à 24 semaines la limite de viabilité du fœtus. Évidemment, peut-être que dans 15 ans, ce sera 4 mois ou 16 semaines. Il n'y a rien d'impossible aujourd'hui. La technique est tellement parfaite.

M. Rondeau: Est-ce que la génétique vous permet de définir un être humain plus tôt qu'à 4 mois?

Dr Légaré: Dès sa conception au moyen des gènes. Je ne sais pas si le prochain argument vous frappera. Le docteur Jutras a des arguments très forts, se fondant sur la génétique, pour prouver que, dès le départ, tout est là: la forme du nez, etc. Parfois, on peut même prévoir une malformation quelconque. Tout est là au départ. D'ailleurs, si, par exemple, on ressemble à nos parents, si on a le nez de notre père si on a les oreilles de notre mère, c'est basé sur la génétique. C'est très fort au point de vue scientifique.

M. Rondeau: Alors, est-ce que je peux demander au docteur Jutras jusqu'à quel point la génétique peut nous prouver qu'un fœtus est un être humain?

The Chairman: At the moment Dr. Jutras is not the witness. You will have to ask the question of Dr. Légaré.

M. Rondeau: Je pourrais poser la question au docteur Légaré. Mais jeudi, alors qu'il s'agissait de spécialités, on a permis à un gynécologue ou à un psychiatre de répondre, d'aider le témoin principal. D'ailleurs, lorsque le ministre est ici, il peut se faire aider par ses aides, ses conseillers; on permet à ces conseillers de répondre pour le ministre sur

[Interpretation]

legally, in the text of the Act, the foetus is not a human being. But medically, to what extent can you prove that a foetus is a human being, so as to know if the Act is evasive, vague or contrary to medicine? Up to what point can you prove that a foetus is a human being? I am not speaking legally, I am speaking medically, because this is legislation which concerns medicine.

Dr. Légaré: I think this is easy to prove. There are modern sciences such as genetics for instance, that are making gigantic strides. I do not know how old the Civil Code is, but there may be texts which have become out of date, which have not kept pace with modern science. The medical knowledge held today may not be the same.

For example, a while ago I said that 24 weeks is set as the limit of viability of the foetus. Perhaps in 15 years it will be fixed at four months or 16 weeks. Nothing is impossible today, with technique as perfect as it is.

Mr. Rondeau: Does genetics enable you to define a human being earlier than at four months?

Dr. Légaré: From the very moment of conception, by the genes. I do not know if the following argument will strike you, but I think Dr. Jutras has very strong arguments based on genetics which prove that, from the very outset, everything is present: the form of the nose, and so on. Even when there are cases when malformations these can be foreseen. Everything is there at the very outset. If we look like our parents, if we have our father's nose, our mother's ears, this is all based on genetics, and these arguments are very strong from the scientific viewpoint.

Mr. Rondeau: I would like to ask Dr. Jutras to what extent can genetics prove that the foetus is a human being?

Le président: En ce moment, ce n'est pas le Dr Jutras qui témoigne. Vous devrez poser votre question au Dr Légaré.

Mr. Rondeau: I could ask this question to Dr. Légaré. But on Thursday, when we were dealing with special cases a gynaecologist or a psychiatrist were allowed to reply to assist the main witness. Moreover, when the Minister is present, he can be assisted by his counsellors and his aids and they are allowed to answer for the Minister when certain ques-

[Texte]

certaines questions. Je me demande si le docteur Légaré peut permettre au docteur Jutras de répondre au point de vue génétique, si lui pense qu'il ne peut pas répondre.

Dr Légaré: Si le Comité le désire, je l'apprécierais grandement, Je pense que c'est à votre profit, parce que le docteur Jutras va vous apporter des lumières. Il possède ce domaine beaucoup mieux que moi.

Mr. McCleave: I have one question, Mr. Chairman. What is the medical experience or medical knowledge on the future ability of women who have undergone abortions to bear children? Does abortion make miscarriage more likely or does it have any effect at all on their child-bearing capacities?

Dr Légaré: Oui. De ce côté-là, je ne verrais pas tellement de problèmes. Évidemment, le fait qu'un col ait été dilaté une fois suppose qu'il peut se dilater plus facilement par la suite. C'est ce qui fait, par exemple, que le travail d'un premier accouchement est plus long que les autres; la dilatation du col est un petit peu plus laborieuse. C'est un facteur, mais, quand c'est fait proprement, je ne dirais pas que cela amène des complications pour l'avenir.

The Chairman: Mrs. MacInnis and gentlemen, if there are no further questions perhaps we could terminate this aspect by the showing of some slides by Dr. Jutras.

Mr. Hogarth: Mr. Chairman, I would like to ask a couple of questions of this witness. Doctor, it appears to me that in the Criminal Code the word for abortion in French is "avortement" and in English the word for abortion is "miscarriage". Do you agree that those terms are synonymous?

Dr Légaré: Je ne sais pas quelles sont les définitions légales de ces termes, mais, dans notre pratique, «miscarriage» est un mot populaire pour déterminer un avortement. Le mot «avortement» sonne assez mal à l'oreille. En français, on va dire de préférence «fausse-couche» au lieu de «avortement», car, aux yeux des gens, l'avortement suppose que cela a été provoqué.

Mr. Hogarth: So far as you are concerned, the word "miscarriage" in English and the word "avortement" in French mean the same thing; they are popular terms for the word "abortion".

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Dr Légaré: En français, j'en suis sûr: «fausse-couche» et «avortement», c'est la même chose. Mais je ne sais pas pour la ter-

[Interprétation]

tions are asked. So, I wonder whether Dr. Légaré can allow Dr. Jutras to answer from the point of view of genetics, if he believes he cannot answer himself.

Dr. Légaré: If the Committee wishes this, I would appreciate it very much. I think that it is all to your advantage because Dr. Jutras will give you some details because he knows this field much better than I do.

M. McCleave: Monsieur le président, j'ai une question à poser. Quelles sont les connaissances de la médecine en ce qui concerne la possibilité des femmes qui ont subi un avortement de porter d'autres enfants? Est-ce que les fausses-couches ne sont plus possibles, ou est-ce que cela affecte la possibilité d'une femme de porter d'autres enfants?

Dr. Légaré: Yes, from this point of view I don't see too many difficulties. Naturally, the fact that the cervix has been dilated once, presupposes that it can dilate more easily later on. That is why, for instance, labour is longer in the case of a first birth than in subsequent ones, because the dilation of the cervix is somewhat more difficult. This is a factor, but when it is properly done, I do not think that this would cause future complications.

Le président: Madame MacInnis, et Messieurs, s'il n'y a pas d'autres questions, peut-être que nous pourrions mettre fin aux délibérations sur ce sujet. Le Dr Jutras a certaines diapositives à nous montrer.

M. Hogarth: Monsieur le président, j'aimerais poser une ou deux questions au témoin. Docteur, il me semble que, dans le Code criminel, en français, on emploie le mot «avortement» et, en anglais, le mot «miscarriage». Êtes-vous d'accord que ces deux termes sont synonymes?

Dr. Légaré: I do not know what the legal definitions of those terms are, but, in our practice, the word "miscarriage" is a popular word for abortion. The term "abortion" does not sound very nice, and for our part, in French, we would rather use the word «fausse couche» instead of «avortement», because people think that an abortion is something that has been induced.

M. Hogarth: A votre avis, le mot «miscarriage», en anglais, et le mot «avortement», en français, veulent dire la même chose; ce sont des termes populaires.

Dr. Légaré: In French, I am sure of it: «fausse couche» and «avortement» is the same thing. But I would hesitate to define the

[Text]

minologie anglaise que je connais moins. J'ai pratiqué aux États-Unis pendant ma résidence. Il me semble que c'est exact, mais je ne voudrais pas aller trop loin, parce que ce n'est pas ma langue. L'avortement, par définition, est l'interruption d'une grossesse avant la viabilité du fœtus, c'est-à-dire quand le bébé est dans l'utérus. L'interruption peut être, soit provoquée, criminellement ou thérapeutiquement, par exemple, soit spontanée tout simplement, mais ce sont toujours des avortements en fait.

Mr. Hogarth: You have made the point I want to establish, that the abortion or the "avortement" is an operation or process that takes place or is done prior to the child's becoming viable in the body of its mother.

Dr Légaré: Par définition, c'est cela, oui.

Mr. Hogarth: That is fine; I have nothing further.

The Chairman: Doctor, will you show the films please?

Mr. Valade: Mr. Chairman I am sorry that I am late but I would like to ask a...

J'aimerais poser une question supplémentaire à celle de M. Hogarth. D'après vous docteur, le terme curetage correspondrait-il au terme «miscarriage»? Est-ce qu'un curetage serait un avortement provoqué ou simplement une intervention chirurgicale jugée nécessaire pour le bien de la mère.

Dr Légaré: Un curetage en fait, c'est un traitement, tandis que le «miscarriage» l'avortement c'est une maladie pour laquelle on applique un traitement, le curetage. Même dans les avortements qu'on dit «spontanés», quand ils se produisent très jeunes ils sont spontanés complets mais, ils sont généralement spontanés incomplets. C'est courant, et l'un de vous a probablement subi cette expérience: même après un avortement spontané la patiente est obligée de subir un curetage.

M. Ouellet: Les femmes!

Dr Légaré: Vos femmes.

M. Valade: Docteur, j'aimerais que vous soyez bien précis et bien clair, parce que je pense que M. Hogarth cherche à établir une nette différence entre les mots «miscarriage» et «avortement».

Si j'ai bien compris, vous avez dit que le mot «miscarriage» n'a pas d'équivalent exact en français. Il n'y a pas une définition... une fausse-couche...

Dr Légaré: Une fausse-couche, je pense, mais je ne voudrais pas m'aventurer à dire que c'est là l'équivalent exact, parce que l'an-

[Interpretation]

English terminology with which I am less familiar. I practised in the United States during my internship. I think this is accurate, but I would not like to state so definitely, because it is not my own mother tongue.

But by definition abortion is the interruption of pregnancy before the viability of the foetus whether it is brought on criminally or therapeutically, for example, or whether it is simply spontaneous, but they are always abortions.

M. Hogarth: Vous avez fait ressortir l'argument que je voulais invoquer, à savoir que l'avortement est une opération qui a lieu, ou qui est effectuée, avant que l'enfant ne soit viable dans le corps de sa mère.

Mr. Légaré: By definition, this is what it is, yes.

M. Hogarth: Bien. Je n'ai pas d'autres questions à poser.

Le président: Docteur, voulez-vous projeter les diapositives, s'il vous plaît?

M. Valade: Monsieur le président, je m'excuse d'être en retard, mais...

I would like to ask a supplementary to Mr. Hogarth's question. In your opinion, Doctor, does the word "curetage" correspond to the word miscarriage? Would curetting be an induced abortion or would it simply be a medical operation judged necessary for the welfare of the mother?

Dr. Légaré: Curetting is a treatment, whereas abortion or miscarriage is an illness where treatment is used, curetting. Even in abortions which are called "spontaneous", when they happen early they are completely spontaneous, but generally they are incompletely spontaneous. This is current, and one of you probably had this experience: even after a spontaneous abortion the patient must have a curetting.

Mr. Ouellet: Women!

Dr. Légaré: Your wives.

Mr. Valade: Doctor, I want to speak very precisely and very clearly, because I think Mr. Hogarth wants to establish a difference in terms between "miscarriage" and "avortement".

If I understood you stated that the word "miscarriage" has no equivalent in French. There is no definition...

Dr. Légaré: "Fausse-couche", I think, but I would not like to give an official view because English is not my own language. In

[Texte]

glais n'est pas ma langue. Je sais qu'en français «fausse-couche» et «avortement» ont un sens différent dans l'interprétation populaire. En fait, c'est la même chose mais «avortement» pour les gens, ne peut être que provoqué.

M. Valade: Provoqué.

Dr Légaré: C'est pour cela qu'on utilise le mot «fausse-couche». Je pense, d'après mon expérience très courte dans un milieu anglophone, que la même différence existe entre «miscarriage» et «abortion», mais je ne pourrais le certifier.

M. Valade: Docteur, si un avortement était provoqué par des médicaments, il s'ensuivrait probablement une fausse-couche. Il y aurait un mélange d'événements, si vous voulez, et peut-être une confusion dans la conclusion médicale: une fausse-couche provoquée par un médicament, ce qui en somme deviendrait un avortement, mais comme médecin, est-ce que vous concluriez à la fausse-couche ou à l'avortement?

Dr Légaré: Disons que votre question est un peu théorique parce que en pratique l'avortement causé par des médicaments est inefficace. On pense à l'ergot, par exemple. Or il faudrait prendre des quantités fantastiques et qui mettraient la vie de la mère en danger avant que l'effet soit efficace au niveau de l'utérus. Disons que le moyen n'est pas bon. Voici comment cela se passe. Il y a des gens qui ont tenté des manœuvres, qui ont pris toutes sortes de choses et qui s'adonnent à avorter parce que de toute façon 10 p. 100 des femmes avortent. Disons qu'il faut qu'il y ait des manœuvres mécaniques pour que l'avortement réussisse. A ce moment il faudrait savoir si ces manœuvres ont été faites dans des milieux clandestins, car on peut le méconnaître, l'ignorer et penser que c'est une «fausse-couche» alors que c'est un avortement en fait.

M. Valade: Est-ce que je dois comprendre, docteur, qu'aucun avortement ne peut être effectivement provoqué par un médicament?

Dr Légaré: A ma connaissance, il en existe aucun qui soit efficace.

M. Valade: Avant la période d'implantation, et après la période d'implantation, y a-t-il une différence dans le résultat du médicament?

Dr Légaré: Certaines hormones par exemple, vont empêcher l'œuf de s'implanter. La «pilule après», par exemple, contient une quantité fantastique d'hormones qui empêchera l'œuf de s'implanter. Et tant que l'œuf

[Interprétation]

French "avortement" and "fausse-couche" are interpreted differently by the people although they do mean the same thing. In fact it is the same thing, but "avortement" to the people means an abortion that is procured.

Mr. Valade: Procured.

Mr. Légaré: This is why we use the word "fausse-couche". I believe that, according to my short experience in the English milieu, that the same difference exists between miscarriage and abortion, but I would not state it definitely.

Mr. Valade: Doctor, if an abortion were induced by drugs, there probably would be a miscarriage. There would be confusion in the medical findings. We would have a miscarriage that would have been induced by the drug used and the miscarriage would become an abortion, but as a doctor, would you say it is a miscarriage or an abortion?

Dr. Légaré: Your question is theoretical because in practice abortion induced by a drug is ineffectual. We are thinking of ergot, for example, you would have to take very large quantities that would certainly endanger the life of the mother before it became effectual at the womb level. The means is not good. This is what happens. People try all sorts of things and they happen to abort because at any rate, ten per cent of women abort. But let us say you have to use mechanical means to induce an abortion. Then, we must know if these steps have been taken under illegal conditions, because we can fail to recognize them, ignore them and think that it is a miscarriage while it is really an abortion.

Mr. Valade: Do you mean to say, Doctor, that no abortion can be brought about by a drug?

Dr. Légaré: To my knowledge no there is none that is effective.

Mr. Valade: Before the period of implantation or after, is there any difference in the effect of the drug?

Dr. Légaré: There are certain hormones which will prevent the implantation of the ovum. For example, the "pill" contains a fantastic quantity of hormones. Which will prevent the implantation of the ovum. And as

[Text]

n'est greffé, on ne peut pas parler d'avortement proprement dit.

M. Valade: Ce qui veut dire que lorsque l'implantation est commencée, il n'y a pas d'avortement provoqué par un médicament sans intervention mécanique comme vous l'avez dit vous-même.

Dr Légaré: C'est cela.

M. Valade: Merci.

Mr. Hogarth: Doctor, I am completely ignorant on this subject, but is not "ergomyecine", or some such name, a drug that induces abortion?

Dr Légaré: Non, effectivement pas. C'est utilisé à cette fin dans le public, mais ce n'est pas efficace. On va en donner, par exemple...

Mr. Hogarth: In certain cases.

Dr Légaré: Il faudrait en donner des doses fantastiques qui pourraient faire mourir la femme avant que... Le problème s'est présenté en Allemagne, avec l'ergot de seigle. Il en entre dans la fabrication du pain et un boulanger a fait une erreur, il a mis trop d'ergot et tout le monde a été énormément malade. On a fait le relevé des femmes enceintes qui en ont mangé et pas plus ont avorté que le 10 p. 100 habituel. Et ce, même en prenant des doses toxiques d'ergot de seigle. C'est synthétisé mais ce n'est pas efficace.

Mr. Hogarth: Are not some hormone drugs used to induce abortion?

Dr Légaré: ... Pour empêcher l'implantation, par exemple. Comme je vous disais, dès après le rapport sexuel, une dose importante de «pilule-après» prise par la femme, va empêcher l'implantation en favorisant la péristaltique, ou les mouvement des trompes. Mais dans ce cas, je pense que ce n'est pas directement un avortement, mais un défaut d'implantation de l'œuf. En fait, on...

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Mr. Hogarth: Well, just on an extreme technical point, your suggestion is that an abortion can only take place after the ova is attached to the uterine wall; is that correct? Your suggestion from a medical point of view is that an abortion can only take place after the fertilized ova has attached to the uterine wall.

Dr Légaré: Yes.

Mr. Valade: That is implantation.

Dr. Légaré: By definition, yes. There must be implantation.

Mr. Hogarth: Thank you, Dr. Légaré.

[Interpretation]

long as the ovum is not grafted, there can be no real abortion.

Mr. Valade: This means that when the implantation has started, no abortion can be procured by a drug without the use of mechanical means, as you said yourself.

Dr. Légaré: That is right, yes.

Mr. Valade: Thank you.

M. Hogarth: Docteur, je suis tout à fait ignorant à ce sujet. Est-ce que l'ergomyecine n'est pas un médicament qui provoque l'avortement?

Dr. Légaré: No, well, it is used by the public for that but it is not effective. It is given...

M. Hogarth: Dans certains cas.

Dr. Légaré: You would have to give fantastic amounts which could lead to the death of the woman before she... It happened in Germany, with spurred tye. It is used in bread making and a baker made a mistake and put in too much ergot and everyone was ill. Pregnant women were examined and they were not found to have suffered from miscarriages even when they had taken it in enormous quantities. It synthesized but it is not effective.

M. Hogarth: Est-ce qu'on n'utilise pas des médicaments à base d'hormones pour provoquer l'avortement?

Dr. Légaré: .. To prevent implantation, for example. As I have said, after sexual relations a major dose of "after-pills" taken by the woman will prevent implantation by improving the peristaltic motion or the motion of the tubes. But, in this case, I do not think it is a real abortion. It is the fact that the egg has not been properly implanted. In fact, we...

M. Hogarth: Au point de vue technique, selon vous, un avortement ne peut avoir lieu qu'après que l'ovule s'est fixé à la paroi utérine, n'est-ce pas?

Dr Légaré: Oui.

M. Valade: Il s'agit d'une implantation.

Dr Légaré: Par définition, oui. Il doit y avoir implantation.

M. Hogarth: Merci, docteur Légaré.

[Texte]

M. Rondeau: Une question supplémentaire, docteur Légaré. Est-ce que ça veut dire qu'en pratique l'avortement se pratique mécaniquement plutôt qu'avec des médicaments?

Dr Légaré: Pour être efficace, oui.

M. Rondeau: Règle courante, lorsqu'on parle de faire un avortement, on a recours à des moyens mécaniques plutôt qu'aux médicaments pour ne pas mettre en danger la vie de la mère.

Dr Légaré: Regardez les techniques préconisées dans les milieux où on fait des avortements thérapeutiques. Les moyens mécaniques sont préconisés, ce sont ceux qui sont efficaces, ce sont les seuls.

M. Rondeau: Merci beaucoup.

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Le président: Monsieur Ouellet.

M. Ouellet: Merci, monsieur le président. Docteur Légaré, vous avez répété à quelques reprises tout à l'heure qu'à peu près 10 p. 100 des femmes avortaient. Vous vouliez parler de ce qu'on appelle en langage populaire «fausse-couche».

Dr Légaré: Forcément, oui. 20 p. 100 des femmes enceintes saignent et la moitié d'entre elles vont avorter. Je parle ici des avortements spontanés. C'est la raison pour laquelle, dans certains pays où l'avortement est légalisé ou encore, où il y a beaucoup d'avortements criminels, le taux est très différent; je parle ici d'avortement spontané.

M. Ouellet: Avez-vous une idée du nombre d'avortements clandestins qui peuvent se faire dans la province de Québec annuellement?

Dr Légaré: On entend des rapports ici et là, mais rarement. Ils n'ont pas de syndicat d'avorteurs. Il est assez difficile de faire des statistiques.

La différence entre une source d'informations et une autre est tellement grande que je me demande ce qu'il faut en croire. Ils peuvent assez bien contrôler ceux qui font des avortements illégaux sur une grande échelle, sur une échelle industrielle, je dirais, mais il y a un lot de petits artisans-avorteurs qui ne sont pas contrôlés. Je ne peux pas du tout vous dire ce qui en est, parce que ma réponse ne serait pas valable.

M. Valade: Docteur, d'après votre expérience clinique, la plupart des personnes qui subissent un avortement clandestin doivent-elles subséquemment aller à l'hôpital pour y subir un curetage? Est-ce que dans la plupart des cas cela devient un impératif, ou y a-t-il

[Interprétation]

Mr. Rondeau: A supplementary question, Dr. Légaré. Does that mean that in practice abortion is done with mechanical devices rather than with drugs to be effective.

Dr. Légaré: Yes, to be effective.

Mr. Rondeau: As a general rule, when you speak of abortion, mechanical devices are used rather than drugs so that the life of the mother is not in danger.

Dr. Légaré: Look at the techniques advocated where therapeutic abortions are performed. They are always mechanical, they are the most effective, they are the only ones.

Mr. Rondeau: Thank you very much.

Mr. Chairman: Mr. Ouellet.

Mr. Ouellet: Dr. Légaré, several times you repeated there were about ten per cent of the women who aborted. You were speaking about what is popularly called "*fausse-couche*".

Dr. Légaré: Per force, yes, twenty per cent of the pregnant women bleed and half of them will abort. These are spontaneous abortions. That is why in certain countries where abortions are legal, or where criminal abortions are numerous, the rate is very different; I am speaking about spontaneous abortions.

Mr. Ouellet: Do you have an idea of the number of illegal abortions which are procured in the Province of Quebec per year?

Dr. Légaré: We hear reports here and there, but rarely. Abortionists have no unions. It is difficult to get statistics.

The difference between one source of information and another is so great that I wonder whether to believe it or not. Those who perform illegal abortions on an industrial scale can be fairly well controlled, I would say, but there are many journeymen-abortionists who are not controlled. I could not tell you. No, I could not give you figures. It would not be a valid reply that I could give you.

Mr. Valade: Doctor, from your experience do most people who go through abortions illegally, subsequently have to go to hospital to have curetting? Does this become imperative in most cases, or are there repercussions to these illegal abortions?

[Text]

dans le plupart des cas des suites à ces avortements illégaux?

Dr Légaré: Les avortements illégaux sont faits assez imparfaitement, au moyen de sondes, pour décoller le pôle inférieur l'œuf; ils font entrer la sonde dans le col, ou rupturent les membranes avec des broches à cheveux, ou avec d'autres outils comme ceux-là. La grossesse ne peut plus se continuer à ce moment-là, mais la patiente fait probablement un avortement incomplet. Je dois vous avouer que nous en soignons un lot où nous ne le savons même pas. Et je dois vous avouer aussi que nous ne sommes surtout pas intéressés à le savoir avec toutes les implications que cela pourrait avoir. Je suis convaincu que les patientes ne s'en vantent pas. Une chose peut nous le faire soupçonner; quand la patiente fait de la température au moment de l'avortement, on peut penser qu'il y a eu des manœuvres, mais encore là c'est difficile à prouver.

M. Valade: Docteur Légaré souvent la science médicale parle d'avortements spontanés. Évidemment, c'est une expression médicale, je pense, qui couvre l'ensemble du phénomène de l'évacuation du fœtus avant terme.

Dr Légaré: Avant viabilité, oui, c'est cela.

M. Valade: Ne serait-il pas plus précis, pour les profanes comme nous de parler d'avortement provoqué, par exemple.

Dr Légaré: L'évacuation d'un fœtus avant sa viabilité, c'est par définition un avortement. Il est spontané si aucune intervention extérieure n'a été faite, il est spontané complet quand la grossesse est très très jeune ou incomplet à partir d'un mois et demi ou deux mois. A ce moment généralement, nous sommes quand même obligés de faire un curetage. Le petit bébé est expulsé mais le placenta ne l'est pas, ou ne l'est qu'incomplètement, et il faut l'expulser. Mais, par définition, l'avortement c'est l'évacuation d'un œuf de la cavité utérine vers l'extérieur avant que le bébé ne soit viable.

M. Valade: D'accord.

The Chairman: Thank you, Dr. Legaré. Dr. Jutras has some slides to show. Is it the wish of the Committee that we see these slides?

Mr. Hogarth: What do they depict?

The Chairman: What is the purpose of showing these slides, Doctor?

• 1045

Dr René Jutras (chef, service de pédiatrie, Hôpital Hôtel Dieu de Québec): Les diapositi-

[Interpretation]

Dr. Légaré: Illegal abortions are performed quite imperfectly, with a probe, to separate the lower end of the ovum; they introduce the probe in the cervix, or break the membranes with hair pins or some such tools. Pregnancy cannot continue, but the patient has an incomplete abortion. I must admit that we look after a great many of these women where we do not even know that this is what has happened because there are a good many implications. I am sure that the patients do not boast about it. We may suspect it because the patient suffers a certain raise of temperature. We suspect there has been something done to her, but we do not know what it has been.

Mr. Valade: Doctor Légaré, in medical science, frequent mention is made of spontaneous abortion. Evidently, this is a medical expression which covers a great many phenomena, in other words the evacuation of the fœtus before time.

Dr. Légaré: Before viability, yes, that is it.

Mr. Valade: Would it not be more exact for inexperienced people like us to talk about procured abortion?

Dr. Légaré: Evacuation of the fœtus before viability is by definition an abortion. It is spontaneous if there has been no external means used to end a pregnancy, it is complete if the pregnancy was very, very recent or incomplete from a month and a half or two months. We have to have a curetting after one and a half or two months. The small baby is expelled, but the placenta is not ready, or is only partially expelled and must be expelled. But by definition it is an evacuation of the ovum from the uterus to the outside before the baby is viable.

Mr. Valade: I agree.

Le président: Merci, docteur Légaré. Le docteur Jutras a des diapositives à montrer, est-ce que le Comité veut voir ces diapositives?

M. Hogarth: Que montrent-elles?

Le président: Dans quel but voulez-vous montrer ces diapositives, docteur?

Dr. René Jutras (Chief of Paediatrics, Hotel Dieu de Quebec, Quebec City, P.Q.): The

[Texte]

ves que j'ai apportées vont vous montrer l'aspect technique de la génétique d'un œuf humain qui a été fécondé. Cette projection a pour but de vous faire connaître, sans aucun parti-pris, quelle que soit votre position, ce qu'est le fœtus, à partir du tout début jusqu'à la viabilité. C'est le but des diapositives que j'ai apportées.

The Chairman: Dr. Jutras, I would suggest we do the same as we did with the previous witness last week. We will adjourn this part of the meeting, we will see the slides and I do not think there should be any questioning. Is that the feeling of the Committee?

Mr. Hogarth: Except that they seem to be exactly what we saw the other day.

The Chairman: Is it the wish of the Committee that we see these slides?

Some hon. Members: Yes.

Mr. Valade: Mr. Chairman, on a point of order, has it been decided that there will not be questions on those slides, which we have not seen before and which may have implications in the present discussion, or is this a general interdiction of asking questions on the slides?

The Chairman: I am sorry I missed the translation.

Mr. Valade: Is it a ruling that after the slides there will not be any questions to the witnesses?

The Chairman: This is my feeling, Mr. Valade.

Mr. Valade: Mr. Chairman, my point is that we should be allowed to ask questions on those slides, which we have not seen before and which may suggest some important questions to either one of the doctors. I am talking about those slides we have not seen before which may be important in the present discussion.

The Chairman: My feeling is, and I have said it ad nauseam that the purpose of this meeting is to discuss the workability of these sections and the feasibility of these sections. If we get into the question of genetics and the pros and cons we could be here for six months.

If these slides do depict anything which might give rise to a question pertaining to the administrative aspect of hospital boards or to paragraph (h), then I think they are valid questions; but I do not think it is proper to have the slides shown and then to get into the involved question of genetics and the question of whether life begins in the womb at a cer-

[Interprétation]

slides I have brought will show you the technical aspects of the genetics of the human ovum which has been fertilized. The purpose of this projection is to show you without any prejudice, regardless of your position, what the foetus is from the very outset up to viability. That is the purpose of the slides that I brought along with me.

Le président: Docteur Jutras, je propose qu'on fasse la même chose qu'avec le témoin de la semaine dernière. Nous ajournerons cette partie de la réunion, nous verrons les diapositives et je ne pense pas qu'il y aura de questions. Qu'en pense le Comité?

M. Hogarth: Cela semble être la même chose que ce que nous avons vu l'autre jour.

Le président: Le Comité désire-t-il voir ces diapositives?

Des voix: Oui.

M. Valade: Monsieur le président, une question de règlement. Est-ce qu'il a été décidé qu'il n'y aurait pas de questions sur ces diapositives que nous n'avons pas vues et qui peuvent avoir des implications sur ce que nous discutons ou est-ce une interdiction générale de poser des questions sur ces diapositives?

Le président: Je m'excuse, je n'ai pas compris la traduction.

M. Valade: Est-ce au titre d'une règle qu'on ne nous permet pas de poser des questions au sujet des diapositives?

Le président: C'est mon point de vue, monsieur Valade.

M. Valade: Mon point, monsieur le président, c'est qu'on devrait nous permettre de poser des questions sur ces diapositives que nous n'avons pas vues et qui risquent de faire naître des questions importantes.

Je parle des diapositives que nous n'avons pas vues et qui seront peut-être importantes pour la discussion.

Le président: Je suis d'avis, et je l'ai exprimé maintes fois, que le but de ce comité est de discuter la viabilité de ces paragraphes. Si on aborde la question de la génétique, si on discute cela, on sera encore ici dans six mois.

S'il y a quelque chose qui peut susciter des questions quant aux aspects administratifs des commissions hospitalières ou au paragraphe (h), les questions sont acceptables. Mais je ne pense pas qu'on doive voir les diapositives et puis ensuite discuter de génétique et de la question de savoir quand la vie commence dans l'utérus. C'est une transgression des

[Text]

tain time. If we do this we are transgressing the rules of this Committee. That is how I feel, Mr. Valade.

Mr. Valade: Could we leave the door open in letting the Chair judge whether these questions are acceptable or not?

The Chairman: We can keep the door slightly ajar but I would hate to see it too wide. I think I have been very patient and I am trying to retain my patience.

M. Rondeau: J'en appelle au règlement, monsieur le président, je crois qu'il est difficile de dire que la discussion technique sur la génétique que nous allons avoir dans quelques minutes favorisera ou non contre l'objet du Bill. Le but de cette discussion est de faire la lumière sur ce bill. Nous ne pouvons juger d'avance que les arguments génétiques qui nous seront apportés seront pour ou contre le bill, je pense qu'ils seront simplement médicaux. Je pense que si nous jugeons que des questions doivent être posées pour nous éclairer sur la génétique médicale, nous devrions pouvoir le faire.

The Chairman: I think you will have a superhuman task to relate these slides to the technical aspects of this Bill but we will proceed.

Mr. Chappell: Mr. Chairman, may I make a comment for your consideration. I appreciate that we are not as technical as a court of law but I bring it to your attention that if there are questions on the slides and the slides are not part of the record it could distort what appears in the written form in the proceedings. I suggest it would better for any person to remember the number of the slide and to say, "In such and such a number we saw this" and then to question later. Otherwise I am afraid that the whole thing will be confused.

The Chairman: Is it the wish of the Committee that we see the slides and then try to restrict our questions?

We will see the slides.

Dr. Jutras: Monsieur le président, j'aimerais vous remercier de m'avoir permis d'adresser la parole et de présenter ces diapositives, dans le simple but d'éclairer davantage, si possible, les membres de votre Comité. J'essaierai d'être le plus bref possible; le sujet de la génétique est assez aride. Vous le verrez par la première partie des diapositives qui sont très techniques et assez poussées. Je m'excuse, au départ, d'avoir l'audace de vous parler de la génétique, alors que je ne suis qu'un humble pédiatre de province.

[Interpretation]

règles du Comité. C'est mon point de vue, monsieur Valade.

M. Valade: Est-ce qu'on pourrait laisser le président décider si les questions sont acceptables ou non?

Le président: Oui, peut-être pourrait-on, à la rigueur, envisager cela. Je pense que j'ai été très patient, et j'essaie de continuer.

Mr. Rondeau: On a point of order, Mr. Chairman, I think it is difficult to say that the technical discussion on genetics is going to be for or against the purposes of the Bill. What we want is to be able to get some light on this Bill. We cannot judge the validity of the genetic arguments submitted for and against the Bill. I believe they will be strictly medical. If we find there are questions to be put to enlighten us in regard to medical genetics we might be able to put those questions.

Le président: Je pense que vous aurez une tâche surhumaine à essayer d'établir les rapports entre les aspects techniques du Bill et ces diapositives.

M. Chappell: Monsieur le président, puis-je faire une remarque sur vos considérations. Je comprends que nous ne soyons pas aussi technique qu'un tribunal, mais s'il y a des questions au sujet des diapositives, et les diapositives ne figurent pas dans le compte rendu, cela déformera le procès-verbal du Comité. Il serait plus sage qu'on se rappelle des numéros des diapositives et que l'on dise à tel ou tel numéro de diapositive on a vu et ensuite poser les questions. Autrement, le procès-verbal sera très confus.

Le président: Voulez-vous voir les diapositives et puis ensuite essayer de limiter vos questions?

Voyons les diapositives alors.

Dr. Jutras: Mr. Chairman, at the outset I would like to thank you for having allowed me to come and present these slides to you. I will attempt to enlighten the members of your Committee on this subject if I can. I will attempt to be as concise as possible: the subject of genetics is quite dry. You will see it in the first set of slides, which are very technical and quite deep. I apologize, at the beginning, for daring to talk to you about genetics while I am only paediatrician.

[Texte]

Comme tous mes confrères qui pratiquent loin des grands centres, je regarde d'un œil admiratif et envieux ces confrères courageux qui font progresser la médecine, en particulier, au Canada. Il y a des gens que nous admirons: les deux noms que vous voyez sur cette diapositive sont de deux personnes que j'admire particulièrement, James Thompson et Margaret Thompson. Ces personnes, d'autres médecins du centre médical de Toronto et d'autres de Winnipeg ont fait une contribution très importante à la génétique et ils sont reconnus mondialement. Ce devrait être pour les membres de ce Comité un sujet de fierté. J'espère que les diapositives que vous allez voir ne seront pas une répétition de ce que vous avez déjà vu.

Le tableau que vous voyez représente la division d'une cellule, quelle qu'elle soit, et en l'occurrence, une cellule humaine. Nous allons assister à une caryocinèse, à une multiplication de la cellule; elle va se diviser et produire deux cellules. Nous partons d'abord de l'interphase, où la cellule est à l'état de repos, et nous voyons, à la prophase, les chromosomes qui commencent à s'enligner entre-eux.

À l'anaphase, les chromosomes ont atteint une situation parallèle, prennent une image parallèle sur un plan, et on voit les centrioles s'en aller à chaque extrémité de la cellule; on les voit s'allier avec des ligaments protéiques, avec le centromère de chaque chromosome; et vous voyez, ici, les deux chromatines de ce côté-ci et les deux chromatines de ce côté-là, liées par un centromère: cela s'appelle un chromosome.

Il y a sur cette image, un, deux chromosomes, d'origine paternelle, et un, deux chromosomes, d'origine maternelle. Toutes les cellules du corps humain sont ainsi constituées, mais ici, pour schématiser, on a mis seulement quatre chromosomes; on sait que dans l'organisme humain, il y a 46 chromosomes par cellule; ils sont très identiques d'une cellule à l'autre et c'est spécifique pour l'espèce humaine; car, chaque espèce animale a son nombre spécifique de chromosomes. Ces chromosomes se sont enlignés parallèlement et se préparent à la division qui se produit à l'anaphase. Nous assisterons ensuite à la caryocinèse de la cellule dont la paroi commence à se scinder pour produire les deux autres cellules qui entrent de nouveau dans l'interphase.

Je vous fais remarquer immédiatement sur cette image un petit point blanc à la périphérie du noyau. Ce petit point blanc, c'est la chromatine du sexe. Le petit point noir que vous voyez ici provient du chromosome du sexe, mais n'est plus le chromosome du sexe; il est devenu un objet que l'on voit sur la

[Interprétation]

As all my colleagues who practice away from the big centres, I look on with admiration and envy these brave colleagues who push medicine forward, especially in Canada. These are men we greatly admire: the two names you now see on the slides are two people I greatly admire, James and Margaret Thompson. These two, others from the Toronto Medical Centre and others from Winnipeg, have made a great contribution to genetics and are recognized throughout the world. Perhaps, this should be a point of pride with the members of this Committee. I hope these slides will not be a repetition of what you have already seen.

The table you see now represents the division of a cell of any kind, but for the moment, a human cell. We will witness a katiokinesis or multiplication of a cell; it is going to divide and produce two cells. We start from the interphase, where the cell is at rest, and we see, in the prophase, the chromosomes beginning to line up.

In the anaphase, the chromosomes have reached a parallel situation, a parallel position and we see the centrioles going towards the extremities of the cell; we see them combine with proteinic ligaments, with the centromere of each chromosome; and which you see here are the two chromatins on that side, linked by the centromere which is called a chromosome.

In this picture one, two chromosomes of paternal origin and two chromosomes of maternal origin. All cells in the human body are thus constituted, but here, to schematize, we have placed only four chromosomes; we know that in a human organism there are 46 chromosomes; they are quite similar from one cell to the other and this is specific for the human race; because each animal species has its own specific number of chromosomes. These chromosomes have lined up in a parallel line and are preparing for the division which happens in the anaphase. We will then witness the katiokinesis of the cell where the wall is beginning to split up to produce two other cells which go again into the interphase.

I will point out immediately, on this picture, a small white dot at the periphery of the nucleus. This little white dot is the sex chromatin. The little black dot you see here comes from the sex chromosome, but is no longer the sex chromosome; it has become an object seen on the human cell, but only in

[Text]

cellule humaine, seulement chez les femmes. C'est une découverte importante qui a été faite en 1953 par Murray Barr de l'Université Western en Ontario. Il a découvert, avec l'un de ses élèves, l'existence de ces corpuscules à la périphérie du noyau, que l'on retrouve chez les cellules des personnes du sexe féminin. Ainsi, on peut, à partir d'une cellule et au moyen d'un microscope, déterminer le sexe d'une personne sans jamais l'avoir vue. On peut le faire aussi dès la première étape de la vie.

La division que vous avez vue sur la première diapositive est une mitose, une division mitotique; c'est une division qui survient des milliers de des millions de fois dans votre organisme tous les jours et qui permet la croissance. Mais la division qui préside à la production de cellules de régénération, des cellules productives, ou des cellules sexuelles, a un caractère différent.

Au lieu de voir les chromosomes se diviser chacun en demi-chromosome, on voit les chromosomes se diviser en groupes; ils ne se séparent pas individuellement, mais se divisent en groupes. On appelle cela la méiose. La méiose doit se faire en deux temps pour aboutir à une cellule sexuelle, soit un spermatozoïde, ou encore un ovule qui va recevoir le spermatozoïde.

Vous voyez ici, à la phase initiale, les chromosomes qui commencent à s'enligner, qui entrent dans la phase de caryocinèse; c'est une cellule sexuelle, une cellule germinale: un ovocyte chez la femme ou un spermatocyte chez l'homme. Après s'être enlignés, ils reprennent la forme de chromosomes réguliers. Pour les besoins de la cause, on a illustré seulement deux chromosomes, une paire de chromosomes, au lieu de 46 ou de 23 paires. Dans la cellule elle-même, il y a 23 paires de chromosomes pour un total de 46 chromosomes. Ces chromosomes vont se lier ensemble partiellement, avant de procéder à la division ou à la méiose fondamentale, pour arriver à la production de deux cellules différentes, de deux cellules préparatoires à l'étape de la germination.

Dans la deuxième étape de la méiose, les deux cellules qu'on a produites sur la première diapositive sont en haut, à l'étape A; elles vont à leur tour se subdiviser, à l'étape B, pour produire 4 cellules germinatrices. Chez l'homme, cela peut vouloir dire 4 futurs spermatozoïdes et chez la femme, cela veut dire deux futurs ovules. Les ovules arrivent toujours à la périphérie de l'ovaire; un des ovules va s'atrophier pour laisser passer l'autre en avant; celui-ci va prendre les devants.

Je veux parler particulièrement des chromosomes, parce que je vous montrerai une

[Interpretation]

women. This was an important discovery in 1953 by Murray Barr of the University of Western Ontario. He discovered, with one of his students, the existence of these corpuscles at the periphery of the nucleus, which are found only in the cells of persons of the female sex. Thus from a cell under the microscope, we can determine the sex of a person without ever having seen that person. We can see that from the very first stage of life.

The division you have seen on the first slide is a mitosis, a mitotic division; it is a division which happens thousands and millions of times in your organism everyday and which permits growth. But the division that is responsible for the production of the regeneration cells, of the productive cells or of the sexual cells, is different.

Instead of seeing the chromosome divide, each into half chromosomes, we see the chromosomes dividing into groups; they do not separate individually, but by groups. We call this meiosis. Meiosis must happen in two stages to arrive at a sexual cell, either a spermatozoid, or even an ovule which will receive experiment as though or an ovule which is used to spend the spermatozoid.

You see here, at the initial stage, chromosomes beginning to line up going into the karyokinesis phase; it is a sexual cell, a germinal cell: an ovocyte in women or a spermatocyte in men. After this lining up they resume the form of regular chromosomes. For now we have only illustrated two chromosomes beginning to line up going into the 46 or 23 pairs. In the cell itself, there are 23 pairs of chromosomes or a total of 46 chromosomes. These chromosomes line together in part before going to the division or we the basic meiosis to arrive at the production of two different cells, of two cells preparatory to germination.

In the second stage of meiosis, the two cells we see on the first slide are at the top, at stage A; they will again subdivide, at stage B, to create four germinative cells. In men, this could mean four future spermatocytes and in women, two future ovules. The ovules always reach the periphery of the ovary; one of the ovules will atrophy and let the other one go forward; that one that will develop.

I would like to speak more particularly of chromosomes because I will show you later a

[Texte]

photographie des chromosomes tout à l'heure, si vous n'avez pas déjà vu ces photographies. Le chromosome est une particule que l'on trouve dans le noyau d'une cellule si elle est agrandie des milliards de fois.

Le chromosome contient ce qu'on appelle «l'acide désoxyribonucléique» qui est le substratum de l'hérédité. C'est comparable, en termes d'imprimerie, à une matrice sur laquelle l'acide ribonucléique qui lui, peut sortir du noyau pour se promener dans la cellule, va aller prendre son image pour ensuite aller dans le noyau cellulaire ramasser des acides aminés, les grouper en polypeptides et leur donner une face identique à celle que l'acide désoxyribonucléique du chromosome lui aura imprimée.

On appelle ça, le phénomène de message: l'acide ribonucléique est le messenger qui transporte le code qui est contenu dans le chromosome. On parle évidemment de code; il est extrêmement complexe et on doit à deux médecins de l'université Harvard, d'avoir en 1955, réussi à faire le diagramme de l'acide désoxyribonucléique, ce qui a ouvert la porte, pour une grande part, à tout le développement fantastique qui s'est produit dans la génétique depuis 10 ans. Et pour avoir fait ce travail d'imagination considérable qui se posait à une science aussi considérable, ils ont obtenu le prix Nobel de la médecine en 1962. Je regrette, je ne me souviens pas de leurs noms, j'ai un blanc de mémoire.

Le chromosome contient en lui tous les gènes. Il y en a 46. Et dans l'acide désoxyribonucléique, il y a tout un code qui est le code de l'hérédité. Ce code contient d'après les chercheurs actuels, environ cent mille particularités, descriptions ou connotations fixées à l'avance qui vont conduire la cellule fécondée à son état définitif d'homme, à l'âge de vingt ans.

C'est vous dire que nous sommes en face d'un véritable défi. C'est plus qu'un négatif. Tout est codifié et scellé à l'avance. Et ce qui est fantastique dans tout ce domaine-là, c'est de voir qu'avant la fécondation il y a une phase de hasard incommensurable. C'est un véritable hasard qu'un spermatozoïde arrive à pénétrer dans un ovule, hasard lié à toutes les contingences humaines, à tous les imbroglios, à toutes les chicanes ou toutes les effusions amoureuses que les humains peuvent avoir entre eux. Il n'y a pas de limites à ce hasard. Il est lié à toutes les incapacités techniques qui peuvent survenir, et aussi au fait que, lorsque la semence mâle est introduite dans les organes génitaux de la femme, il y a environ 400 millions de spermatozoïdes qui partent à l'assaut de l'ovule et qu'il n'y en a qu'un qui gagne la course. Ça aussi c'est un

[Interprétation]

photograph of the chromosomes, if you have not already seen these photographs. The chromosome is a particle found in the nucleus of a cell, shown a thousand times its size.

The chromosome contains what is called deoxyribonucleic acid which is the substratum of heredity. This is comparable, in printing terms, to a type mould in which the ribonucleic acid, which can leave the nucleus to travel within the cell, will take its image and then go back in the cell nucleus to pick up amine acids, group them in polypeptides and give them an identical image to the one of the deoxyribonucleic acid the chromosome has imprinted on it.

This is what we call the carrier phenomenon: the ribonucleic acid is the messenger which carries the code which is contained in the chromosome. We are obviously speaking of the code; this is a very complex code and we owe a debt to two doctors of Harvard University who in 1955 have succeeded in making a diagram of this deoxyribonucleic acid, which has opened the door, to a great extent, to the whole fantastic development which happened in genetics in the last 10 years. And for having performed this wonderful progress they obtained the Nobel Prize for Medicine in 1962. I am sorry I do not remember their names. My memory fails me.

The chromosome contains in itself all the genes. There are 46 chromosomes and in the deoxyribonucleic acid there is a complete code which is the code of heredity. This code contains, according to present research about 100,000 special characteristics, descriptions or connotations determined in advance which will lead to the impregnated cell its final state of man at the age of 20.

This means that we are faced with a true challenge. It is more than a negative. Everything is coded and sealed in advance. And what is fantastic in this field is that before the fertilization occurs, there is an immeasurable period of chance. It is truly an accident that a spermatozoid enters into an ovule, a chance tied to all the human contingencies, to all the imbroglios, to all the quarrels or to all the amorous demonstrations which human beings may have among themselves. It is tied to all the technical incapacities which may occur, and also to the fact that when the male sperm is introduced in the genital organs of the woman, there are approximately 400 million spermatozooids who attack the ovule and only one wins the race. This also is a fantastic "chance", even more than Mayor Drapau's lottery!

[Text]

«hasard» fantastique, encore plus que la loterie du maire Drapeau!

Mais il y a une chose à laquelle les humains ne pensent pas souvent. C'est qu'une fois que la tête du spermatozoïde a pénétré dans l'ovule, le hasard est fini, il n'y a plus de hasard du tout. A partir de là, le déclenchement est automatique, et extraordinaire quand on le considère.

Moi je trouve que c'est plus fantastique que le déclenchement de la fusée qui va aller porter les Américains dans la lune! Parce que, à ce moment-là, vous allez voir une seule cellule composée de 23 chromosomes venant de l'homme, de 23 venant de la femme; vous allez voir cette seule cellule se multiplier en l'espace de 20 ans pour devenir 60 trillions de cellules. Et toutes les cellules qui composent votre corps comme le mien, remontent toutes—que vous le vouliez ou non—remontent toutes à la première cellule produite à l'occasion du contact sexuel entre votre père et votre mère qui a donné le bébé que vous étiez en naissant.

Voici une image d'un caryo-type d'un être humain normal, qui comprend 23 paires de chromosomes composées chacune d'un membre venant de l'épouse et d'un membre venant de l'homme, à une exception près, celle-ci: dans le cas présent, vous avez les 23 paires qui sont identifiées de 1 à 22, puis la 23^e, c'est la paire qui porte l'indication du sexe. Quand on voit ce chromosome-ci, le tout petit, en forme d'«Y», on sait que c'est un mâle, le «Y» n'existe que chez les mâles. Ce qui veut dire que c'est le père qui détermine le sexe de son enfant, qui sera mâle ou femelle selon le sexe contenu dans le spermatozoïde transmis par le père, et selon que le chromosome du sexe sera accepté soit par le petit «Y» soit par la grande «D», parce que le spermatozoïde de l'homme peut avoir deux formes.

Quand il se divise, une partie du spermatozoïde garde le chromosome «X» et l'autre garde le chromosome «Y». La femme, elle, a deux chromosomes grand «X». Elle n'a pas de chromosomes «Y» et, par conséquent, elle ne peut pas déterminer le sexe de son enfant. C'est le père qui le fait. C'est une de vos prérogatives que vous ignoriez peut-être; enfin, sachez-le.

Maintenant je vous montre des chromosomes qui contiennent chacun en eux, greffés en parallèle, de 2,300 à 2,400 caractères précis où sont codifiés la forme de votre nez, la couleur de vos yeux, celle de vos cheveux, la forme de vos mains, votre taille définitive et le genre de caractéristiques physiques que vous aurez, votre poids, etc. Il codifie également, jusqu'à un certain point, votre capacité

[Interpretation]

But there is one thing which human beings often forget. It is that once the head of the spermatozoid has penetrated into the ovule, chance disappears. There is no more hazard at all. Automatically the process is set in motion and this is an extraordinary phenomenon.

I think that this is even more fantastic than the launching of the rocket which will carry the Americans to the moon!

Because I think at this moment you see one single cell composed of 23 male chromosomes and of 23 female chromosomes, you will see a single cell multiply in the space of 20 years and become 60 trillion cells. And all the cells which compose your body as well as mine, whether you want to or not, go back to the first cell when your father met your mother and had sexual relations with her and she gave birth to a baby.

This is a picture of a karyo-type of a normal human being including 23 pairs of chromosomes, each pair composed of one member coming from the wife and one member coming from the husband, with one exception, the following: in the present case you have the 23 pairs which are identified from 1 to 22, and then the 23rd pair, it is the pair which carries the sex indication. When you look at this chromosome, the very small one, in the shape of a «Y», we know it is a male, the «Y» exists only in males. This means that it is the father who determines the sex of his child, who will be male or female according to the sex contained in the spermatozoid transmitted by the father and if the sex chromosome will be accepted either by the small «Y» or by the large «X», because the male spermatozoid may have two different forms.

When it splits, one part of the spermatozoid keeps chromosome «X» and the other keeps chromosome «y», while in the case of women there are two large «X» chromosomes. She has no «y» chromosomes, therefore she cannot determine the sex of her child. It is the father who does this. This is one of the prerogatives of which maybe you are not aware. So, now you know.

Now I am showing you chromosomes which contain in themselves, grafted in a parallel, from 2,300 to 2,400 exact characteristics which are coded the shape of your nose, the colour of your eyes, of your hair, the shape of your hands, the final size of your body and the type of physical characteristics you will have, your weight and so on. Also to a certain extent your intellectual capacity is coded.

[Texte]

intellectuelle. Et nous le verrons plus loin dans une autre diapositive qui, elle, concerne un enfant pathologique.

Voici le caryo-type d'un enfant. Si on avait pu le faire, dès la conception, on aurait pu prévoir d'avance que cet enfant-là, serait malade, porteur d'une tare qui, sans être héréditaire, est irréversible, incorrigible et qui est une plaie sociale assez importante. Vous voyez ici la paire de chromosomes n° 21 qui, au lieu de contenir 2 chromosomes, en contient 3. Alors, ce n'est plus une paire c'est un triplet. Cela ne marche pas.

Le généticien qui voit ça dans son microscope peut prédire à l'avance que l'enfant qui présente cette anomalie-là dans son karyotype, sera un enfant aux yeux comme un mongol, dont la langue sera portée à faire protrusion entre les lèvres vingt-quatre heures par jour, dont les oreilles seront insérées très basses sur le crâne, dont le crâne sera aplati d'avant à l'arrière, dont les mains seront très courtes, et avec une crête transversale, contrairement à une personne normale qui a une double crête curviligne, dont la plante des pieds aura le même aspect que la paume des mains et dont le petit doigt sera beaucoup plus petit que les autres doigts.

Mais ce qu'il y a de pire, ce n'est pas trop grave ce que je viens de dire, c'est que cet enfant-là a également une atteinte cérébrale à son quotient intellectuel et qu'il ne pourra pratiquement pas faire de scolarité. C'est ce qu'on appelle le syndrome de Down. Le nom de la maladie est la trisomie 21. C'est ce qu'on appelle le mongolisme qui est un mauvais terme parce que ça n'a aucune relation avec l'aspect peuple mongol.

Actuellement il n'est pas possible de faire cette prédiction avant que le bébé soit né. Dès la naissance, d'ailleurs les stigmates sont toutes là pour nous le dire.

Mais, il semble bien, avec les développements futurs, que nous connaissons déjà, en partie, dans le domaine de l'érythroblastose fœtale, qu'on sera en mesure de prévoir plusieurs mois avant la fin de la grossesse, si le bébé est atteint du syndrome de Down. Ce sont des développements pour les années à venir, il n'y a pas d'erreur possible.

Cette diapositive vous illustre l'aspect chimique de l'acide désoxyribonucléique. C'est un grand terme qui désigne une grande chose: toute l'histoire de la génétique humaine, toute l'hérédité. C'est un acide, une protéine, une grosse molécule protéique qui, en fait, prend cet aspect pratiquement physique. C'est comme cela que les chimistes ont pu la concevoir. C'est le diagramme de nos

[Interprétation]

And this will be apparent in another slide which shows a pathological child.

Here is the caryo-type of a child. If we could have shown this from the moment of implantation or conception, we could have predicted in advance that the child would be ill, the victim of a defect which, without being hereditary, is irreversible, incorrigible and an important social disease. You see here the pair of chromosomes No. 21 which instead of containing two chromosomes, contains three. Then it is not a pair anymore, it is a triolet. This does not work.

The geneticist who sees this under his microscope can predict in advance that this child who shows this anomaly in his karyotype will have mongoloid eyes, whose tongue will protrude 24 hours a day, who will have low set ears, a flattened skull from front to back, whose hands will be very short with a transverse crest, instead of a double curvilinear crest as that of a normal person, whose feet will be the same as the palm of the hand and whose small finger will be much smaller than the others.

But this is not too serious, what is worse is that this child also has an intellectual deficiency and, in practice, will not be able to attend school. This is Down syndrome. The name of the illness is trisomy 21. This is what we improperly call mongolism, because it has nothing to do with the national aspect of the Mongols.

Actually, it is not possible to do this prediction before the birth of the child, but at the very moment of birth it can be done.

But it would seem, thanks to future developments which are already indicated, partly, in the field of foetal erythroblastosis, that we will be able to predict many months before the end of pregnancy if the child suffers from the Down syndrome. This will certainly be developed in years to come, there is no doubt about it.

This slide shows the chemical aspect of the deoxyribonucleic acid. It is a big term which indicates something very important; all the history of human genetics. The entire heredity. It is an acid, a protein, a large proteic molecule which in fact, takes on this practically physical appearance. That is how the chemist sees it. This is the diagram of those famous doctors who won the Nobel Prize. It

[Text]

fameux médecins qui ont gagné le prix Nobel. Il a permis aux généticiens de se démêler dans ce domaine si complexe de la génétique et de la croissance, de la multiplication des cellules humaines.

Celle-ci vous illustre comment, avant de se diviser, les chromosomes, qui sont constitués d'acide désoxyribonucléique, augmentent en eux la quantité d'acide désoxyribonucléique, pour pouvoir produire deux chromosomes au lieu d'un. Vous voyez comment, de la cellule du chromosome-mère à celle du chromosome-fils, on obtient la subdivision, toujours avec la nouvelle substance qui s'ajoute et qui est en blanc, pour aboutir, toujours en progression géométrique, de 1 à 2, 2 à 4, 4 à 8, 8 à 16; c'est ainsi qu'on procède dans le domaine de la multiplication des cellules humaines.

Cette diapositive vous illustre, au microscope, le corpuscule du sexe découvert par Murray Barr en 1953 et que vous voyez à la périphérie des noyaux des cellules. On le voit très bien dans les cellules épithéliales, dans les cellules de la salive et surtout dans les granulocytes du sang, les granulocytes neutrophiles ou polymorphonucléaires. Il est indiqué ici par la flèche. Vous voyez ici le signe du gamète femelle, c'est une cellule du sang humain femelle, et ici, vous voyez le gamète mâle qui n'a pas de petits points comme dans la gamète femelle.

Cette diapositive vous illustre un autre aspect de la génétique. Vous voyez la trisomie 21: mongolisme. D'autres défauts génétiques peuvent survenir et les généticiens en découvrent sans cesse de mois en mois. La littérature médicale rapporte des nouvelles entités cliniques génétiques au point de vue déficiences.

La cellule humaine, l'œuf humain, par l'acide désoxyribonucléique qui est situé sur ces 46 chromosomes, contient au-delà de 100,000 gènes. Mais, il n'y a pas un être humain qui est parfait. On a tous des petits défauts, soit intérieurs, soit apparents, soit cachés. Il n'y a pas d'être humain qui a 100,000 gènes parfaits, parfaitement enlignés. Il ne faut jamais oublier qu'il n'y a pas d'êtres humains parfaits. On s'illusionne parfois.

Vous avez ici la liste de toutes les déficiences anatomiques chez un enfant qui est porteur de cette anomalie du chromosome n° 18, d'autres du chromosome B.

Je regrette que ma diapositive soit négative. C'est un contresens une diapositive négative, mais je n'ai pas pu faire mieux. Ceci a été préparé à la dernière minute, parce que

[Interpretation]

enabled the geneticists to find their way in this complex field of genetics, growth, and the multiplication of human cells.

This one shows you how, before dividing the chromosomes, which are made up of deoxyribonucleic acid, increase their own quantity of deoxyribonucleic acid, in order to be able to produce two chromosomes instead of one. You can see how, from the mother, chromosome cell to the son chromosome cell, the subdivision is obtained, with the new substance which is added and which is shown in white, to end up in a geometric progression gain from 1 to 2, 2 to 4, 4 to 8, 8 to 16; this is how we proceed the field of the multiplication of human cells.

This slide shows you, under the microscope, the sex corpuscle which Murray Barr discovered in 1953, and which you see on the periphery of the nuclei of the cells. We see it very clearly in the epithelial cells, in the saliva cells and especially in the granulocytes of the blood, the neutrophile or polymorphonuclear granulocytes. It is indicated here by the arrow. Here you have the female gamete sign. It is a cell of the female human blood, and here you have the male gamete which has no small points like in the female gamete.

This slide shows another aspect of genetics. Here you have trisomy 21: mongolism. Other genetic deficiencies may arise and new ones are being discovered by geneticists every month. Medical literature shows new genetic clinical entities from the viewpoint of defects.

The human ovum, by means of the deoxyribonucleic acid found in those 46 chromosomes, contains over 100,000 genes. But there is not a human being who is perfect. We all have small defects, either interior, hidden or apparent. No human being has 100,000 perfect genes, that are perfectly set in line. We must never forget this that there are no perfect human beings. We sometimes have illusions about this.

We have a list here of all the anatomical defects in a child which carries this anomaly of no. 18 chromosome, and others of B chromosome.

I am sorry, but my slide is a negative. This is a contradiction: a negative slide—but this was the best I could do. This was prepared at the last minute because I was only called last

[Texte]

j'ai été convoqué seulement vendredi dernier. On n'avait pas le nécessaire pour la rendre positive.

Le petit garçon que vous voyez ici est parfaitement normal; c'est un Canadien de 2 ans et demi, dont vous avez vu le karyotype normal à la troisième diapositive.

Vous avez ici une petite Indienne, également canadienne, de 2 ans et demi, dont vous avez vu le karyotype anormal, la trisomie 21; le mongolisme. Voyez la forme de ses yeux. Vous ne pouvez pas très bien voir, mais j'ai apporté le volume ici et vous pourrez mieux voir l'image. Vous pouvez voir le texte écrit au bas de la diapositive et lire la légende de cette diapositive. Les mains sont trapues, le petit doigt est presque effacé, la bouche est entrouverte et la langue sort à profusion. Les oreilles sont un peu basses et les yeux sont en amande; ce sont des yeux d'un mongolien, qui ne ressemblent pas aux yeux du petit Indien qui a des yeux normaux d'un petit Indien canadien.

Passons à l'aspect anatomique. S'il y a des diapositives que vous avez déjà vues, avertissez-moi et on passera aux suivantes. Je ne veux pas trop vous retarder.

C'est le travail d'une équipe de médecins suédois qui, à un congrès médical, a présenté une étude de la circulation chez les fœtus, à partir de 6 semaines jusqu'à 18 semaines. Ils ont réussi à le faire, mais je ne sais pas comment ils ont pu s'y prendre. En fait, nous ne pourrions pas faire ces études en raison des lois actuelles et en raison d'autres restrictions qu'une personne pourrait avoir. Incidemment, je veux faire remarquer au Comité que la question de l'avortement n'est pas une question de religion. Je connais, et vous connaissez des athées qui sont contre l'avortement. Il ne faut pas mettre la religion partout, non plus. Il y a des barrières de conscience que chacun peut avoir, sans qu'il soit question de religion.

Vous voyez ici le fœtus à différents âges. Ils ont réussi à momifier tout le système circulatoire de ces petits fœtus pour en étudier la composante. Vous voyez que la circulation apparaît très tôt sur le fœtus.

On sait qu'à l'âge de 24 jours, le cœur d'un fœtus a commencé à battre! Ce sont tout de même des choses qui nous portent à réfléchir un peu. J'entendais, il n'y a pas tellement longtemps, un médecin dire que c'est un amas de cellules. Un amas de cellules, il faut s'entendre. C'est un amas de cellules qui présentent une cohésion extraordinaire. Il n'y a pas un généticien qui ne viendrait pas corroborer

[Interprétation]

Friday to come and testify. We did not have the necessary equipment to fully develop it.

The little boy you see here is perfectly normal. He is a Canadian who is two and a half years old, whose normal karyotype you saw in the third slide.

Here you also have a little Indian girl, who is also Canadian and who is two and a half years old, whose abnormal karyotype you saw, trisomy 21: mongolism. Look at the form of her eyes. You can't see it very well, but I have a picture here in the book, I will show it to you later on and you will be able to see it more clearly. You can read what is written below the slide. The hands are compact, the little finger is almost non-existent, the mouth is half open, and the tongue protrudes. The ears are somewhat low and the eyes are almond shaped. These are mongoloid eyes which are not like the eyes of the little Indian boy who has the normal eyes of a young Canadian Indian.

Now, let us look at the anatomical aspect. If I show you slides you have already seen, tell me, and we will go on the next one. I do not want to hold you up unduly.

This is the work of a team of Swedish doctors who, at a medical congress, presented a study on circulation in the foetus from 6 to 19 weeks old. They managed to do this, although I do not know how. In fact, we could not carry out these studies because of our present laws and because of other restrictions that might exist any given individual. Incidentally, I would like to point out to the Committee that the question of abortion is not a question of religion. I know atheists, and so do you, who are against abortion. We must not put religion in everything either. Individuals may set certain limitations or barriers due to their own conscience, without there being any question of religion.

Here you have a foetus at various ages. They have succeeded in mummifying the whole circulatory system of these little foetuses to make a study of it. This shows you how the circulation appears at a very early stage in the foetus.

We know that at the age of 24 days, the heart of the foetus has begun to beat. These are things which give you food for thought. I heard a doctor say recently that it was just a mass of cells. It is a mass of cells, certainly, but a mass of cells which show an extraordinary cohesion. There is not a single geneticist who would not corroborate what I am telling you. It is not a mass of ordinary cells. They

[Text]

ce que je vous dis. Ce n'est pas un amas de cellules ordinaires. Ce sont les cellules d'un embryon humain. C'est un amas de cellules qui présente une dynamique de croissance fantastique. Quand on sait que dans les deux premiers mois, il va multiplier son poids par 240, et sa taille par 1000. Vous avez là quelqu'un qui me paraît singulièrement pressé et je me demande pourquoi.

On voit de plus près ces circulations qui ont été faites et les différentes étapes de développement de ces enfants. Celui-là mesure 140 millimètres; il est âgé de 16 semaines. Voyez comme sa circulation est devenue presque parfaite. Il n'y a pas de squelette dans cela, seulement des vaisseaux qui ont été momifiés; le reste a tout été liquéfié.

Chez les mêmes fœtus, les médecins suédois ont illustré la circulation du cœur fœtal. Ce sont des fœtus, en somme, qui sont le produit d'avortements, mais qui vivent peut-être quelques heures après l'avortement. Parfois le cœur va battre pendant, peut-être, une heure ou deux heures après un avortement et les Suédois en ont profité pour faire l'étude de ce fœtus. Ils ont étudié, avec une substance opaque, comment, à partir de la veine ombilicale, le sang va se distribuer dans l'organisme d'un fœtus long d'un pouce et demi à deux pouces. C'est ce qu'ils ont fait sur ces images. On voit la progression du sang qui va imprégner le foie au dernier stade de sa circulation. Ils en ont profité également pour calculer le temps que pouvait prendre un cœur de fœtus, à cet âge-là, pour faire faire un tour complet dans l'organisme.

Ils sont arrivés à un temps de trois secondes. Évidemment, cela s'explique parce qu'il se multiplie à une vitesse effarante.

On trouve les vestiges de la multiplication cellulaire du fœtus chez l'enfant, par exemple, qui va réparer une coupure en quatre jours, tandis que vous, vous prendrez peut-être huit à dix jours pour réparer une coupure.

Un homme âgé, un vieillard va peut-être prendre 15 jours, mais l'enfant de deux ans ou trois ans n'a plus de plaie au bout de 4 jours. Il est guéri, parce que la caryokinèse est abondante et rapide. Mais elle est encore cinq fois plus rapide qu'à cet âge-là, à l'intérieur du fœtus.

Il est extraordinaire de penser qu'il n'y a rien qui soit laissé au hasard, absolument rien. Tout est dans la première cellule, inscrit

[Interpretation.]

are the cells of a human embryo. It is a mass of cells which shows a fantastic dynamic growth. When we know that in the two first months its weight will be multiplied by 240, 1,000. This seems to be somebody who is in a great hurry, and I wonder why.

Now, we can see, at closer range, the circulation and the various stages of development of these children. That one measures 140 millimeters at 16 weeks. You can see how its circulation has become almost perfect. There is no skeleton, just vessels which have been mummified. The rest has all been liquefied.

In the same fetuses the Swedish doctors have shown the circulation of the foetal heart. They use fetuses which are the product of abortions, but which live perhaps a few hours after the abortion. Sometimes the heart beats after the abortion and the Swedish doctors took advantage of this to study these fetuses. They have studied, by means of an opaque substance, how the blood is distributed through the umbilical vein into the system of a foetus that is one and a half to two inches long. That is what we see on these slides. And we see the progression of the blood which goes to the liver at the last stage of the circulation.

They have also calculated that the time it takes for the heart of a foetus, at that age, to perform a complete blood circulation of the system is three seconds. This can be explained by the fact that it is multiplying at a very rapid rate.

You can see here the vestiges of the cellular multiplication of the foetus in the case of a child who, for instance, has cut himself and will heal in four days, whereas it may take you eight to ten days to heal a cut.

In an old man it can take 15 days to heal, but in a child of two or three years old the wound heals in four days. It is healed because the Karyokinesis is abundant and fast. But it is five times more rapid than at that age, in the foetus.

What is extraordinary in this, is that there is nothing which is left to chance, absolutely nothing. Everything is in the first cell,

[Texte]

dans les cent mille gènes des quarante-six chromosomes. Tout est prévu et tout est minuté. Et dès ce moment est prévu l'âge de la petite fille quand ses hanches vont commencer à élargir, son bassin, et aussi l'âge du petit garçon lors de sa première pollution nocturne. Tout est inscrit dans les gènes.

Actuellement, vous voyez un fœtus de douze semaines. Maintenant nous arrivons au phénomène de la reproduction. Voici l'ovule, l'ovaire, l'utérus, vous reconnaissez toutes ces choses-là, vous les avez certainement vues dans d'autres cours, l'ovaire est ici, de chaque côté; alors l'ovaire va produire un ovule qui s'engage dans la trompe. Et pendant qu'il s'engage dans la trompe, s'il se produit des rapports sexuels, c'est la course aux cent mille dollars. Et vous allez voir les spermatozoïdes s'engager dans l'utérus, le premier arrivé étant le premier servi.

Voici les spermatozoïdes; ils sont comme des têtards vus à travers le microscope. Le spermatozoïde est doué de mouvement, il est capable de se déplacer. Pourquoi la Nature en a-t-elle mis quatre cent millions alors qu'un seul suffisait? Il faudra le demander au Créateur quand vous le rencontrerez.

Ce fœtus-ci a dix-huit semaines. Il vient d'être expulsé par avortement spontané. Regardez ce qu'un tel fœtus peut faire; il suce son pouce. Un petit fœtus de onze semaines. A douze semaines: regardez-le introduire son pouce dans sa bouche. A seize semaines, les yeux sont complètement développés, les paupières sont un peu collées ensemble, un peu pour protéger les yeux. C'est vers le sixième mois que les paupières vont se séparer l'une de l'autre. Mais l'intérieur de l'œil est complètement formé et l'intérieur de l'oreille est complètement formé à partir de la trentième journée de la grossesse. Le cœur du fœtus commence à battre vers le vingt-quatrième jour, et au cinquantième jour, il a pris sa forme normale. Il va grossir, devenir plus fort, mais il atteint son aspect normal à partir du cinquantième jour.

Ce fœtus a vingt-six semaines: regardez comme ses doigts sont bien formés. Les ongles sont présents, et auront presque besoin d'être coupés à la naissance. Alors vous avez là un fœtus de vingt-six semaines, c'est un peu moins que sept mois de grossesse. Ce fœtus-là est viable.

Je vais maintenant vous montrer des diapositives de fœtus qui ont vécu.

Voici un fœtus, si on peut l'appeler ainsi, après six mois de grossesse. Il est né, la mère était malade; elle avait été impliquée

[Interprétation]

imprinted in the 100,000 genes and the 46 chromosomes. Everything is provided for and everything is timed. Everything is provided for, the age at which the little girl will begin to develop broader hips and pelvis, and also the age at which the little boy will have his first nocturnal pollution. Everything is imprinted in the genes.

At the present time, you are looking at a twelve week old foetus. Now we see the phenomenon of reproduction. You have the ovule, the ovary, the uterus, you have surely seen this before. The ovaries are here, on both sides. Each ovary produces one egg which goes into the tubes, and if there are sexual relations, there is a \$100,000 race. And you will see the spermatozoa go into the uterus, and it is first come first served.

These are the spermatozoa who are like little tadpoles seen through a microscope. They can move and travel. Why did nature provide 400 million of them when one was sufficient? You will have to ask this question to our Creator when you will meet Him.

Here is an example of a foetus at 18 weeks. It has just been expelled through spontaneous abortion. This is what such a foetus can do: it is sucking its thumb. An 11 week old foetus: The former was 18 weeks and this one is 11 weeks. At 12 weeks, look at him putting his thumb into his mouth. Sixteen weeks, at this point the eyes are completely developed. The lids are slightly stuck together to protect them somewhat. It is around the sixth month that the lids separate. The interior of the eye and the inside of the ear are completely formed from the 30th day of pregnancy. The heart of the foetus starts to beat around the 24th day and at the 50th day, the heart is normally formed. It will grow and strengthen, but it is completely formed from the 50th day.

This foetus is 26 weeks old. Look how the fingers are well formed. The nails are there and will practically have to be cut at the moment of birth. So this is a 26 week old foetus, which is a little less than seven months of pregnancy. This foetus can live.

And now, I am going to show you slides of foetuses which have lived.

This is a foetus, if we can call it so, which is six months old. The mother was ill. She was in an automobile accident. She had a

[Text]

dans un accident d'automobile, fait un choc et une infection post-accidentelle, et elle a accouché spontanément à six mois de grossesse. Nous avons recueilli le bébé. Regardons-le sous tous les angles pour voir l'aspect du bébé à six mois.

Les couleurs ne sont pas très bonnes, mais vous voyez comme ses jambes sont petites. Il est présentement dans une «isolette» qui entoure complètement le bébé dans une enveloppe de matériel plastique solide, qui le garde continuellement au chaud, et l'empêche de se refroidir. Le problème du maintien de la chaleur est le problème fondamental, primordial pour un bébé né très prématurément. C'est le premier problème auquel il faut s'attaquer, après celui de la respiration. Le problème est que le cerveau est présent, avec des millions de cellules déjà. Dès la naissance, le cerveau du bébé compte six milliards de cellules, les cellules permanentes de son cerveau, jusqu'à la fin de sa vie. On ne peut pas dire cependant à quel moment de la grossesse, elles étaient toutes présentes.

Voyez les petits trous pour l'aération de l'isolette, par lesquels je pouvais mettre mon doigt à l'intérieur, prendre mon anneau et la passer dans son pied. Ce bébé pesait une livre et quinze onces. Soixante jours après, le même bébé est normal; depuis, son évolution a été normale. Il a huit ans aujourd'hui et est un excellent écolier. Il fait son travail scolaire comme tous les autres enfants. Nous l'avons toujours suivi, sans jamais le perdre de vue. A l'âge d'un an, il pesait vingt-sept livres.

Voici un autre fœtus qui est dans une plus grande détresse encore, il est né après vingt semaines de grossesse. Comparez les doigts de la personne qui en prend soin avec le bras du bébé, regardez sa figure. Nous l'avions appelé «patate au four» pour la bonne raison que nous l'avons enveloppé dans du papier d'aluminium pour l'empêcher de se refroidir. L'expérience a été extraordinaire. Ce sont nos amis britanniques qui ont pensé à cette méthode, et nous essayons de nous tenir au courant et de les imiter dans les bonnes choses.

Voyez le même bébé dans son isolette. Il a une électrode greffée à son abdomen pour surveiller constamment sa température. Dès qu'on ouvrait le papier d'aluminium la température du bébé s'abaissait à 96° et 95°, mais dès que l'on refermait le papier d'aluminium, sa température remontait à 98°. Nous avons fait une canalisation ombilicale à ce bébé qui en était à sa vingtième semaine de

[Interpretation]

shock and she had post-accidental infection, and at six months she gave spontaneous birth, and we saved the child. We are going to look at it from all angles to see what the foetus looks like when it is six months old.

The colour is not too good, but you can see how small the legs are. This baby is in a solid plastic envelope which keeps it continually warm and keeps it from being cold. The problem of maintaining heat is the fundamental problem and is of primary importance for a very premature baby. It is the first problem to be solved, after that of respiration. The problem is that the brain is present with already millions of cells. At the moment of birth there are 6 billion cells in the brain of the child, and these are the permanent cells of his brain, until the end of his life. We do not know however, at what moment of pregnancy they are all present.

These are the small holes to ventilate the plastic envelope and you will see that I could put my finger inside the envelope and put my ring around the foot of the baby. The baby weighed 1 lb. and 15 ozs. And now sixty days later, this is the same baby; it is normal. Development has been normal since that time. This child is now eight years old, he is a good student and he goes to school like all other children. We have always followed him and have never lost sight of him. He weighed 27 lbs. at the age of one year.

Here is another foetus which is in a worse predicament. It was born after twenty weeks of pregnancy. Look at the fingers of the persons caring for the baby and the arm of the baby, and its face. We called it "baked potatoe" because it was wrapped up in aluminum paper to prevent it from cooling off. It was an extraordinary experience. It was our British friends who thought of that method, and we are trying to keep abreast and to imitate those things that are of value.

This is the same baby in its isolation envelope. It has an electrode grafted to its abdomen to check the temperature continually. As soon as we opened the aluminum paper, the temperature went down to 96° and 95°, but as soon as the aluminum paper was closed up again, the temperature went back up to 98°. We performed an umbilical canalization on this baby that was 20 weeks old in

[Texte]

grossesse, et qui vivait. Un phénomène inusité, il pesait une livre et cinq onces.

A Arthabaska, nous avons formé, depuis près de six mois, un comité de mortalités périnatales, et mis toutes nos ressources à contribution pour réduire au minimum la mortalité dans notre pouponnière, et c'est l'un des effets de notre travail. Nous avons dit à tous les médecins accoucheurs: «Quelle que soit la dimension du bébé, appelez-nous, nous nous en occuperons.» C'est ce que nous faisons depuis, et nous avons eu des résultats fantastiques à date. Nous sauvons des vies que nous n'aurions jamais pensé pouvoir sauver auparavant. C'est pourquoi je vous dis que dans à peu près dix ans, vous serez probablement obligés de reformuler votre loi si vous la votez, parce qu'il y aura des bébés qui, après cinq mois de grossesse, et peut-être quatre mois et demi de grossesse pourront être sauvés. Et si vous vous trouvez en face du problème suivant: la mère a subi un avortement, et l'avorton vit. Qu'allez-vous faire à ce moment-là? Qui va en prendre soin? Il est comme un pendu qui se relève après être tombé.

Voici le même petit bébé, enveloppé dans son papier d'aluminium.

Maintenant, un fœtus libéré. Comme tout bon Canadien, il est allé se promener aux États-Unis.

Je vous ai présenté ces quelques diapositives, dans le but, non de vous influencer dans un sens ou l'autre, mais de vous faire connaître davantage le fœtus, de vous en faire voir tous les aspects et beaucoup de détails. Inutile de vous le rappeler, c'est un sujet très complexe. On pourrait en parler pendant des heures, et des hommes plus compétents que moi, par exemple MM. Thompson, les auteurs du volume dont je me suis inspiré ce matin pourraient en faire autant.

Il me reste à vous remercier de m'avoir écouté. J'espère avoir pu vous être utile, pour vous faire connaître davantage l'objet sur lequel porte le projet de loi à l'étude.

On m'a demandé tout à l'heure quand commençait la vie humaine. Je réponds ceci: l'ovule fécondé porte en lui tellement de caractéristiques tellement définitives, que quand l'ovule est fécondé, si rien n'intervient, on n'a jamais vu sortir du corps de la femme autre chose qu'un bébé. C'est impossible. Par conséquent, il y a une liaison directe entre l'ovule fécondé, le bébé humain et l'adulte. Et la trajectoire que l'homme parcourt à partir de sa première cellule jusqu'à sa mort à 70 ou 80 ans, est une trajectoire continue, sans aucune

[Interprétation]

the womb, and that lived. An unusual phenomenon is that it weighed one pound and five ounces.

Six months ago, we formed a prenatal mortality committee in Arthabaska, and we have made use of all our resources to reduce mortality to its minimum in the nursery. This is one of the results of our work. We told all the obstetricians: "Whatever the size of the baby, call us, and we will take care of them." This is what we have been doing since then, and we have had fantastic results up to this date. We are saving lives which we would never have hoped to save previously. This is why I am telling you that in about 10 years, you will have to amend the terms of your bill if you pass it, because it will be possible to save babies after five and maybe 4½ months of pregnancy. And what will you do when you are faced with the following problem: the mother has had an abortion and the foetus lives. Who will have to take care of it? It is like a hanged man who gets up again after having fallen through the trap door.

This is the same baby wrapped up in its aluminum paper.

This is a liberated foetus. Like any good Canadian, he made a trip to the United States.

Gentlemen, I have shown you a few slides for the purpose, not of convincing you in any way, but of explaining the foetus to you, of showing it to you under all its aspects, along with many details. It is a very complex subject. We could go on talking about it for hours and so could people who are more competent than myself, Messrs. Thompson, for instance, who have written the book on which I based myself this morning.

I thank you for having listened to me and I hope that I have been able to provide you with some further knowledge regarding the subject of the bill under consideration.

I have been asked at what moment human life begins and I would answer as follows. The fertilized ovum carries in itself so many definite characteristics that when the ovum is fertilized, and if nothing interferes, nothing else but a baby has ever resulted from this. Anything else would be impossible. Consequently there is a direct relation between the fertilized ovum, the human baby, and the adult. And the trajectory followed by man from the very first cell until the moment that it dies at 70 or 80 years is a continuous one,

[Text]

frontière où on pourrait dire: «Jusque là, c'était un être qui n'était pas humain et maintenant c'est un être qui est humain.» La science ne connaît aucune «borne» qui tranche cette question. A la question que vous avez posée tout à l'heure: «Quand commence la vie humaine?» je crois qu'il n'y a qu'une réponse possible, à date: La vie commence au début: quand l'ovule est fécondé.

Et si vous faites la rétrospective de votre vie pour revenir le plus loin possible en arrière, vous allez peut-être retrouver des souvenirs jusqu'à l'âge de cinq ans, quatre ans. Et je suis sûr qu'aucun d'entre vous ne pense être aujourd'hui un homme différent de cet enfant de cinq ans ou quatre ans qui commettait de petites étourderies. La distance qui vous sépare de l'enfant que vous étiez à quatre ou cinq ans, votre organisme s'étant pratiquement renouvelé cinq ou six fois depuis, est beaucoup plus considérable que la distance qui sépare l'ovule qui vient d'être fécondé et le fœtus de sept mois qui est viable. Ces considérations à mon avis, doivent être étudiées, avant qu'une loi soit précisée et je pense que le législateur doit en être au courant.

Il utilisera ces renseignements comme il le voudra. C'est dans cet esprit que je suis venu vous rencontrer. Je vous remercie.

The Chairman: Thank you, Doctor, for the very interesting exposition on genetics.

Are there any questions pertaining to these clauses?

M. Rondeau: A l'heure actuelle, à quel âge la médecine peut-elle sauver un fœtus? A l'âge de cinq mois, de quatre mois?

M. Jutras: Six mois, c'est je pense, ce qu'on a pu faire de mieux, à date.

Mr. MacGuigan: Did I understand correctly that you had saved foetuses at the age of 20 weeks?

Dr. Jutras: Twenty weeks? No. . .

Je regrette, je ne voulais pas vous induire en erreur. Le premier fœtus dont je vous ai montré la photographie a vécu, mais pas le deuxième. Le deuxième est né après seulement vingt semaines de grossesse. Nous avons réussi à le faire vivre pendant soixante heures, ce qui est, à mon avis, un certain exploit pour un hôpital qui n'est pas universitaire, où on n'a pas tout l'équipement nécessaire. Nous avons mobilisé presque en permanence une équipe de trois personnes pendant ces soixante heures-là pour essayer de la maintenir en vie. Nous avons fait tout notre possible, mais il n'a pas vécu. Je regrette, je ne voulais pas

[Interpretation]

without any boundary telling us: "Up to that point it was a being who was not human, and now he is a human being." There is no scientific "guidepost" to settle this question. To your question which you asked a while ago, namely: "At what moment does human life begin?" I think there is only one possible answer today: Life begins at the very outset, when the ovum is fertilized.

And if you go back in your own life perhaps you will remember things which happened when you were four or five years of age. But I am sure that not one among you thinks that he is different today from the four or five year old child who got into small mischief. The distance that separates you from the four or five year old child you were considering that your body is renewed itself five or six times since then is far greater than the distance that separates the ovum that has just been fertilized from the seven month old foetus that is viable. In my opinion, these considerations should be studied before drafting any specific legislation, and I think that the legislators must be aware of this.

They can do as they please with this information. It is with this attitude that I have come before you. Thank you.

Le président: Merci Docteur, pour cette exposition fort intéressante sur la génétique.

Y a-t-il des questions au sujet de ces articles?

Mr. Rondeau: At the present time, at what age can medicine save a foetus? At the age of four months, or five months?

Mr. Jutras: I believe that six months is the best we have been able to do, so far.

M. MacGuigan: Est-ce que j'ai bien compris que vous avez sauvé des foetus à l'âge de vingt semaines?

Dr Jutras: Vingt semaines? Non. . .

I'm sorry, I did not want to mislead you. The first foetus of which I showed you a photograph has lived, but not the second one. The second one was born after only 20 weeks of pregnancy. We succeeded in having the foetus live during 60 hours which, in my opinion, is definitely a feat for a hospital that is not a university hospital and does not have all the required equipment. We had a team of three people looking almost permanently after the foetus for 60 hours to try to keep it alive. We did all we could, but we were not able to make it alive. I did not want to mislead you with

[Texte]

vous induire en erreur à ce sujet-là et je ne voudrais pas m'attribuer des mérites que je n'ai pas.

M. Rondeau: J'aurais des questions sur...

The Chairman: Just a moment, please. Mr. Gilbert, do you have a question?

Mr. Gilbert: No questions, thank you.

The Chairman: Mrs. MacInnis and Gentlemen, I think we have had a very good hearing and if there are no further questions I feel perhaps this would be a good time to adjourn. We will reassemble at 3.30 p.m. and go on to questions pertaining to the breathalyzer test and to insanity before trial. And perhaps we might also touch upon the homosexual clauses. Are there any questions?

M. Rondeau: Monsieur le président, je voudrais seulement remercier les témoins de ce matin pour leur gentillesse, leur amabilité. Je leur suis aussi reconnaissant de s'en être tenus au sujet pour lequel nous les avons convoqués, soit l'aspect technique des implications du projet de loi. Alors, je remercie beaucoup le D^r Légaré de Québec, le D^r Jutras de Victoriaville, pour leur magnifique exposé de ce matin.

The Chairman: On behalf of the Committee, Doctors, I would like to add my vote of thanks. Thank you very much.

Mr. Hogarth: Mr. Chairman, will the usual order be given to pay the expenses of the witnesses who appeared?

• 1138

The Chairman: Yes, this would be in order. The meeting is adjourned.

[Interprétation]

regard to this subject, and I would not wish to assume any credit that I do not deserve.

Mr. Rondeau: I have some questions regarding...

Le président: Un instant, s'il vous plaît. Monsieur Gilbert, avez-vous une question à poser?

M. Gilbert: Non. Merci.

Le président: Madame MacInnis et Messieurs, je pense que nous avons eu une excellente séance. S'il n'y a pas d'autres questions, je crois que c'est le moment de lever la séance. Nous nous réunirons à quinze heures trente pour étudier des questions quant à d'autres articles, concernant l'invressomètre et l'aliénation mentale, avant le procès. Nous pourrions peut-être aborder aussi les articles qui portent sur l'homosexualité. Y a-t-il des questions?

Mr. Rondeau: Mr. Chairman, I just want to thank the witnesses we have heard this morning for their courtesy. And I also appreciate the fact that they stuck to the subject for which we had summoned them, i.e. the technical aspect of the implications of the bill.

I thank Dr. Légaré of Quebec City, and Dr. Jutras of Victoriaville, for their excellent presentations.

Le président: De la part du Comité, Docteurs, je voudrais ajouter mes remerciements. Merci beaucoup.

M. Hogarth: Monsieur le président, paierait-on, comme d'habitude, les dépenses des témoins qui sont venus témoigner?

Le président: Oui, cela est conforme au Règlement. La séance est levée.

OFFICIAL BILINGUAL ISSUE

FASCICULE BILINGUE OFFICIEL

HOUSE OF COMMONS

CHAMBRE DES COMMUNES

First Session

Première session de la

Twenty-eighth Parliament, 1968-69

vingt-huitième législature, 1968-1969

STANDING COMMITTEE

COMITÉ PERMANENT

ON

DE LA

JUSTICE AND LEGAL AFFAIRS

JUSTICE ET DES QUESTIONS
JURIDIQUES

Chairman

Mr. Donald R. Tolmie

Président

MINUTES OF PROCEEDINGS
AND EVIDENCE

PROCÈS-VERBAUX ET
TÉMOIGNAGES

No. 14

TUESDAY, MARCH 25, 1969

LE MARDI 25 MARS 1969

Respecting

Concernant le

BILL C-150

BILL C-150

Criminal Law Amendment Act, 1968.

Loi de 1968 modifiant le droit pénal.

Appearing

A comparu

Minister of Justice and
Attorney General of Canada.

Hon. John N. Turner

Ministre de la Justice et
Procureur général du Canada.

WITNESS—TÉMOIN

(See Minutes of Proceedings)

(Voir Procès-verbal)

THE QUEEN'S PRINTER, OTTAWA, 1969

L'IMPRIMEUR DE LA REINE, OTTAWA, 1969

STANDING COMMITTEE ON
JUSTICE AND LEGAL
AFFAIRS

COMITÉ PERMANENT
DE LA
JUSTICE ET DES QUESTIONS
JURIDIQUES

Chairman
Vice-Chairman

Mr. Donald Tolmie
M. André Ouellet

Président
Vice-Président

and Messrs.
et Messieurs

Alexander,
Blair,
Cantin,
Chappell,
Deakon,
Gervais,

Gilbert,
Hogarth,
MacEwan,
MacGuigan,
² Marceau,
¹ Mather,

McCleave,
McQuaid,
Murphy,
Rondeau,
Valade,
Woolliams—20.

(Quorum 11)

Le secrétaire du Comité
ROBERT V. VIRR
Clerk of the Committee

Pursuant to S.O. 65(4) (b)

¹ Replaced Mrs. MacInnes on March 24

² Replaced Mr. Guay (*Levis*) on March
24

Conformement à l'article 65(4) (b)

¹ Remplace M. MacInnes le 24 mars

² Remplace M. Guay (*Levis*) le 24 mars

MINUTES OF PROCEEDINGS

(Text)

TUESDAY, March 25, 1969.
(19)

The Standing Committee on Justice and Legal Affairs met this afternoon at 3:47 p.m. the Chairman, Mr. Tolmie presiding.

Members present: Messrs. Alexander, Cantin, Chappell, Deakon, Gervais, Gilbert, Hogarth, Mather, MacEwan, MacGuigan, Marceau, McCleave, Murphy, Ouellet, Tolmie, Woolliams (16).

Appearing: Honorable John N. Turner, Minister of Justice and Attorney General of Canada.

Witnesses: From the Department of Justice: Mr. J. A. Scollin, Q.C., Director, Criminal Law Section; Mr. D. H. Christie, Assistant Deputy Attorney General.

The Committee resumed clause by clause consideration of Bill C-150.

The Chairman called clause 7.

Mr. Woolliams moved:
that Bill C-150 be amended in clause 7 by adding to line 9 on page 24, after the word "age", the following:

"except to bestiality"

Motion negatived.

Mr. Woolliams for Mr. Valade moved:
that Bill C-150 be amended by deleting clause 7.

Motion negatived.

On clause 7, moved by Mr. McCleave:

that Bill C-150 be amended by striking out line 21 on page 24 and substituting the following:

"force, threats or fear of bodily harm or is"

Motion carried.

Clause 7, as amended, was carried.

PROCÈS-VERBAL

[Traduction]

LE MARDI 25 mars 1969
(19)

Le Comité permanent de la justice et des questions juridiques s'est réuni cet après-midi à 15h.47 sous la présidence de M. Tolmie.

Présents: MM. Alexander, Cantin, Chappell, Deakon, Gervais, Gilbert, Hogarth, Mather, MacEwan, MacGuigan, Marceau, McCleave, Murphy, Ouellet, Tolmie, Woolliams (16).

A comparu: L'honorable John N. Turner, ministre de la Justice et Procureur général du Canada.

Témoins: Du ministère de la Justice: MM. J. A. Scollin, C.R., Directeur de la Section du droit criminel; et D. H. Christie, sous-procureur général adjoint.

Le Comité reprend l'étude article par article du Bill C-150.

Le Président met en délibération l'article 7.

M. Woolliams propose:
que l'on modifie l'article 7 du bill C-150 en ajoutant à la ligne 9 de la page 24, après le mot «plus», ce qui suit:

«sauf pour la bestialité»

La proposition est rejetée.

M. Woolliams pour M. Valade propose:
que l'on modifie le Bill C-150 en retranchant l'article 7.

La proposition est rejetée.

Relatif à l'article 7, M. McCleave propose:

que le Bill C-150 soit modifié par le retranchement de la ligne 21, à la page 24 et son remplacement par:

«par la force, par la menace ou par la peur de lésions».

La proposition est adoptée.

L'article 7, modifié est adopté.

On clause 16, Mr. Murphy moved:

that Bill C-150 be amended as follows:

(a) by striking lines 15 to 28 inclusive on page 36 and substituting therefor:

“an offence punishable on summary conviction”.

(b) by striking out lines 36 to 42 inclusive on page 36 and lines 1 to 6 inclusive on page 37 and substituting therefor:

“an offence punishable on summary conviction”.

After debate thereon, with the consent of the Committee, the motion was withdrawn.

Mr. Murphy then moved:

That Bill C-150 be amended in clause 16 as follows:

(a) by striking out lines 15 to 28 inclusive on page 36 and substituting therefor:

“an offence punishable on summary conviction and is liable to a fine of not less than fifty dollars and not more than one thousand dollars or to imprisonment for not more than 6 months, or both.”

(b) by striking out lines 36 to 42 inclusive on page 36 and lines 1 to 6 inclusive on page 37 and substituting therefor:

“an offence punishable on summary conviction and is liable to a fine of not less than fifty dollars and not more than one thousand dollars or to imprisonment for not more than 6 months or both”.

Motion was carried.

Clause 16, as amended, was carried.

Clause 44, carried.

On clause 45, Mr. MacGuigan moved:

Relatif à l'article 16, M. Murphy propose:

que l'on modifie le Bill C-150 comme il suit:

a) en retranchant les lignes 14 à 32 à la page 36 et en les remplaçant par ce qui suit:

«une infraction punissable sur déclaration sommaire de culpabilité».

b) en retranchant les lignes 40 à 48 de la page 36 et les lignes 1 à 6 inclusivement à la page 37 et en les remplaçant par ce qui suit:

«une infraction punissable sur déclaration sommaire de culpabilité».

Après discussion, avec le consentement du Comité, la proposition est retirée.

M. Murphy propose alors:

que l'on modifie l'article 16 du Bill C-150 comme il suit:

a) en retranchant les lignes 18 à 32, à la page 36 et en les remplaçant par ce qui suit:

«paragraphe (1), est coupable d'une infraction punissable sur déclaration sommaire de culpabilité, et passible d'une amende d'au moins cinquante dollars et d'au plus mille dollars ou d'un emprisonnement d'au plus six mois, ou des deux peines à la fois.»

b) en retranchant les lignes 40 à 48, à la page 36, ainsi que les lignes 1 à 6, à la page 37 et en les remplaçant par ce qui suit:

«de sang, est coupable d'une infraction punissable sur déclaration sommaire de culpabilité, et passible d'une amende d'au moins cinquante dollars et d'au plus mille dollars ou d'un emprisonnement d'au plus six mois, ou des deux peines à la fois.»

La proposition est adoptée.

L'article 16 modifié est adopté.

L'article 44 est adopté.

Sur l'article 45 du Bill, M. MacGuigan propose—

That Bill C-150 be amended by striking out lines 5 to 9 on page 62 and substituting the following:

'45. Subsection (2) of section 489 of the said Act is repealed and the following substituted therefor:

"(2) An indictment under subsection (1) may be preferred by the Attorney General or his agent, or by any person with the written consent of a judge of the court or of the Attorney General or, in any province to which this section applies, by order of the court.

(3) Notwithstanding anything in this section, where'

Motion carried.

Clause 45 as amended carried, subject to future amendment by Mr. Hogarth.

At 5:45 p.m. the Committee adjourned until Wednesday, March 26, 1969.

Que le bill C-150 soit modifié en retranchant les lignes 5 à 8 à la page 62 et en les remplaçant par ce qui suit:

'45. Le paragraphe (2) de l'article 489 de ladite loi est abrogé et remplacé par ce qui suit:

«(2) Un acte d'accusation prévu par le paragraphe (1) peut être présenté par le procureur général ou son représentant ou par toute personne avec le consentement écrit d'un juge de la cour ou celui du procureur général ou, dans une province à laquelle le présent article s'applique, par ordonnance de la cour.

(3) Nonobstant toute disposition du présent article, lorsque'

La motion est adoptée.

L'article 45 modifié est adopté sujet à une modification ultérieure de la part de M. Hogarth.

À 17h.45, le Comité s'ajourne jusqu'à mercredi le 26 mars 1969.

Le secrétaire du Comité,
R. V. Virr,
Clerk of the Committee.

[Texte]

EVIDENCE

(Recorded by Electronic Apparatus)

● 1548

The Chairman: Gentlemen, I see a quorum. We will now turn to page 24, Clause 7.

On Clause 7—Exception re acts in private between husband and wife or consenting adults—

Mr. MacGuigan: May I ask the Minister through you if he has any further comments to make on this clause in the light of the criticisms which Dr. Mewett directed at the drafting when he appeared before us with regard to the relationship of this to the bestiality offence in section 147?

Hon. John N. Turner (Minister of Justice and Solicitor General): With the greatest respect to Professor Mewett, I think the definition of bestiality means between a person and an animal and I do not see how it can possibly be affected by the amendment in Section 149A. I do not feel there is any confusion or any need to clarify it.

Mr. MacGuigan: Unless two people were involved either with the same animal or two animals there would be no exoneration under section 149A?

Mr. Turner (Ottawa-Carleton): Exoneration applies to people. The beast is not exonerated.

Mr. Woolliams: I would like to speak to that. Perhaps the Minister of Justice sees something about the law that I do not see, but Section 147 of the Code reads:

Every one who commits buggery or bestiality is guilty of an indictable offence and is liable to imprisonment for fourteen years...

And then Section 149A reads:

Sections 147 and 149 do not apply...

Surely as bestiality is mentioned in Section 147—and I do not think this was the intention of the drafter—it is exempt. They appear to have legalized it. Subclause (b) reads:

(b) any two persons, each of whom is twenty-one years or more of age,

As the Minister says, there is no exclusion of the animals.

[Interprétation]

TÉMOIGNAGES

(Enregistrement électronique)

Le président: Messieurs, je vois un quorum. Nous passons à la page 24, article 7.

Article 7—Exceptions concernant les actes de la vie privée entre conjoints ou entre adultes consentants.

M. MacGuigan: Le ministre a-t-il des observations à ajouter à la suite du témoignage du D^r Mewett au sujet des crimes de bestialité prévus à l'article 147.

Hon. John N. Turner (ministre de la Justice et Procureur général): Avec tout le respect que je dois au professeur Mewett, je crois que la définition de bestialité concerne un acte entre une personne et un animal, et je ne vois pas comment ceci pourrait affecter l'article 149A. Je ne crois pas qu'il y ait danger de confusion.

M. MacGuigan: A moins qu'il n'y ait deux personnes avec le même animal ou deux animaux il n'y aurait aucune exonération en vertu de l'article 149A.

M. Turner (Ottawa-Carleton): L'exonération s'applique aux personnes et non pas à l'animal.

M. Woolliams: Le ministre de la Justice voit peut-être dans la loi quelque chose que je n'y vois pas, mais l'article 147 du code dit:

Est coupable d'un acte criminel et passible d'un emprisonnement de quatorze ans, quiconque commet la sodomie ou bestialité.

Et ensuite, l'article 149A dit:

Les articles 147 et 149 ne s'appliquent à aucun acte commis,

Aussi sûrement que la bestialité est mentionnée à l'article 147, et je ne pense pas que cela ait été l'intention des rédacteurs, elle en est exempte. Le sous-alinéa b) dit:

b) entre deux personnes, dont chacune est âgée de 21 ou plus,

Comme le dit le ministre, les animaux ne sont pas exclus.

[Text]

Mr. Turner (Ottawa-Carleton): I said that animals were not brought into this. Section 149A applies to a husband and wife or any two persons, and not even by giving the widest latitude to the Interpretation Act will it bring an animal into it.

• 1551

Mr. Woolliams: All right. With respect, Mr. Chairman—and I must go through you—Clause 149A reads:

“149A. (1) Sections 147 and 149 do not apply to any act committed in private between (b) any two persons,...

I suppose this means that the act has to be committed between any two persons?

Mr. Turner (Ottawa-Carleton): That is right, not between a person and an animal.

Mr. Woolliams: I suppose what he is saying—and he is perhaps stretching it a little—is that it does not apply to any act committed in private between any two persons. They may get into the act, but there may be an animal in the pantomime as well. I think we should amend it in this way. I move that Bill C-150 be amended by adding after the word “age” in Section 149A, line 9, the words “except as to bestiality”, or something of that nature.

An hon. Member: Yes, why not?

Mr. Woolliams: Then you will really have clarified it. We have some weird and wonderful interpretations of the law.

The Chairman: Is this a formal amendment?

Mr. Woolliams: Yes, I will move it. I do not want to legalize affairs between animals and people.

Mr. Turner (Ottawa-Carleton): I do not usually oppose clarifications and I am not opposing a clarification here. I do not think it is a clarification because I do not think any clarification is necessary. I state this on the basis of the advice I have received and on my own reading of the sections of the amendment. This would do nothing to clarify it and it is really in the realm of someone's imagination and in the realm of being immaterial. For that reason I am afraid, Mr. Chairman, I must take the position that it is not a useful amendment.

Mr. Woolliams: You may be right, but with the greatest respect, Mr. Turner, it refers to “act committed” and the word “act” is not

[Interpretation]

M. Turner (Ottawa-Carleton): Il n'y a pas d'exclusion pour les animaux. L'animal n'entre pas en ligne de compte. L'article 149A s'applique à un mari et sa femme et il est certain qu'il n'y aura pas d'animaux qui vont entrer là-dedans, même si on interprète la *Loi d'interprétation* d'une façon bien souple.

M. Woolliams: Très bien. Je dois respectueusement m'en remettre à vous, monsieur le président.

L'article 149A dit:

«149A. (1) Les articles 147 et 149 ne s'appliquent à aucun acte commis, dans l'intimité, b) entre deux personnes...

Je suppose que cela veut dire que l'acte doit être commis entre deux personnes données?

M. Turner (Ottawa-Carleton): C'est exact, non pas entre une personne et un animal.

M. Woolliams: Je suppose que l'on veut dire, et c'est peut-être forcer les choses un peu, que cela ne s'applique pas à un acte commis dans l'intimité entre deux personnes. Ils peuvent commencer l'acte, mais il peut y avoir aussi un animal. Je crois que nous devrions modifier l'article ainsi. Je propose que le bill 150 soit modifié en ajoutant, après le mot «âge», à l'article 149A, ligne 9, les mots «sauf lorsqu'il est question de bestialité» ou quelque chose du genre.

Une voix: Oui, pourquoi pas?

M. Woolliams: Alors ce sera vraiment clair. Nous avons vu des interprétations singulières et fantastiques de la loi.

Le président: Est-ce une modification officielle?

M. Woolliams: Oui, je vais la proposer. Je n'ai pas l'intention de légaliser les relations entre personnes et animaux.

M. Turner: Je ne m'oppose ordinairement pas aux éclaircissements. Je ne crois pas qu'il s'agisse ici d'un éclaircissement. Je ne crois pas qu'un éclaircissement soit nécessaire. Je me fonde sur ce que j'ai lu et sur les conseils que j'ai reçus. Je crois que cet amendement n'aiderait pas à éclaircir la situation. Je crois qu'il s'agit plutôt d'un excès d'imagination. Je crois que cet amendement n'est pas utile.

M. Woolliams: Vous avez peut-être raison, mais avec tout le respect que je vous dois, monsieur le ministre, on parle d'acte

[Texte]

defined. We do not know what the "act committed" is. It may be an indecent act in reference to each person doing some indecent act with an animal and they are both in the "act." It is like a conspiracy. I really do not think it is all that clear, sir, with the greatest respect. I know how you are reading it and I am aware of your interpretation, but what would be wrong with excluding it?

The Chairman: Mr. Mather.

Mr. Mather: As a new member of this Committee may I ask a question at this time? I am not sure whether the Committee has dealt with the animal welfare sections of this bill. If they have not, this might be the place to discuss it.

The Chairman: We have, sir.

Mr. Mather: I am sorry that you have.

The Chairman: Is the Committee ready for the amendment?

• 1555

Amendment negated.

The Chairman: Shall Clause 7, proposed Section 149A carry?

Mr. Woolliams: I have another amendment to move. In view of the fact that you have not accepted what I considered to be a very wise amendment and in view of the fact that I consider that you have now legalized relationships between two people and animals, I move that Bill C-150 be amended by deleting all of Section 149A. I do this on two grounds, one of which I dealt with in connection with bestiality and the other is that I have always taken the position as far as homosexuality and other acts are concerned that it is a matter for rehabilitation. It is a health matter rather than a matter for criminal law.

Mr. Hogarth: By your amendment do you mean to delete the whole of Section 149A?

Mr. Woolliams: Right.

Mr. Hogarth: And you leave gross indecency as it was before?

Mr. Woolliams: That is right.

Mr. Hogarth: And then you say it is a matter for rehabilitation and not penology?

Mr. Woolliams: There may be a case in reference to the point you have raised and

[Interprétation]

commis». Le mot «acte» n'est pas défini et nous ne savons pas de quoi il s'agit. Il peut s'agir de deux personnes commettant un acte indécent avec un animal, et elles commettent toutes deux l'«acte». C'est comme une conspiration. Mais je ne crois pas, avec tout le respect que je vous dois, je ne crois pas que ce soit très clair. Je sais que vous le lisez et je comprends votre interprétation, mais qu'est-ce qui nous empêche d'exclure cela?

Le président: Monsieur Mather?

Mr. Mather: Je suis nouveau membre de ce Comité. Je ne sais pas si on a étudié les articles du Bill qui portent sur le bien-être des animaux. Si cela n'a pas été fait, ce serait peut-être le moment de le faire.

Le président: C'est fait.

Mr. Mather: Je le regrette bien.

Le président: Le Comité est-il prêt à adopter l'amendement?

Amendement rejeté.

Le président: L'article 149A tel que proposé est-il adopté?

Mr. Woolliams: J'ai un autre amendement à proposer, étant donné le fait que vous n'avez pas accepté un amendement que je jugeais tout à fait raisonnable, et compte tenu du fait que je considère que vous avez ainsi légalisé les rapports entre 2 personnes et des animaux je propose maintenant: «Que le Bill C-150 soit modifié en enlevant tout l'article 149A.» Je fais cela pour deux raisons. J'ai déjà donné la première lorsque j'ai parlé de la bestialité. La seconde, c'est que j'ai toujours cru qu'en ce qui concerne l'homosexualité et d'autres actes semblables, c'était une question de réhabilitation. C'est plutôt une question de santé qu'une question qui relève du Code criminel.

Mr. Hogarth: Vous voulez donc supprimer l'article 149A au complet?

Mr. Woolliams: Oui.

Mr. Hogarth: Et vous laissez «grossière indécence» comme auparavant?

Mr. Woolliams: Exact.

Mr. Hogarth: Vous dites alors qu'il s'agit d'une question de réhabilitation et non pas une question qui relève du Code criminel?

Mr. Woolliams: Il y a peut-être un cas en rapport avec la question que vous avez soule-

[Text]

you may have to move something if you wish, but at least it puts the law back where it was.

The Chairman: Gentlemen, this is a very major amendment. Mr. MacGuigan.

Mr. MacGuigan: I would like to speak against that amendment, Mr. Chairman. Not only do I feel that this is not a proper area for the state to be legislating on—the area of the bedrooms of the nation—but I think it is also the general popular feeling in our time in the twentieth century that it would certainly be a retrograde step, with the public expectation that has been built up around the proposal of the law, if we did not exit from certain aspects of private behaviour which most people think are no longer the law's business, and we would do this if we did not pass this section as it stands. I therefore oppose the amendment which Mr. Woolliams has put.

The Chairman: Mr. MacEwan?

Mr. MacEwan: Just a word on this, Mr. Chairman. I cannot accept Mr. MacGuigan's words of wisdom that this is the interpretation which is accepted in the twentieth century. That is not the interpretation I get from talking to many people. I agree with the amendment. I do not think it changes things—as pointed out in earlier Committee meetings by Mr. McQuaid—it does not change them at all, and I think it is a matter that should not be dealt with in the Criminal Code, it belongs in another sphere, and for that reason I will very strongly back the amendment of Mr. Woolliams on this.

Mr. Hogarth: I do not understand the rationale behind this amendment. As I understand Mr. Woolliams' position, he first of all moved an amendment to exempt two people who are engaged in a sexual act with an animal. That was his first motion. Then, because that failed, you are not going to exempt two people alone committing an act between them.

Mr. Woolliams: I would like to speak on a point of order. That is not my position. I made it very clear that if we had moved the amendment it at least would have tidied up the law, as I think it should be. There is also the question of whether you agree with the philosophy behind the act at all. That is the second point.

Mr. Hogarth: I see. Your suggestion is that you do not agree with the philosophy behind it at all, but if it is going to pass in the form

[Interpretation]

vée et il vous faudra peut-être proposer quelque chose si vous voulez. Ceci remet la Loi à l'état où elle se trouvait auparavant.

Le président: Il s'agit d'un amendement majeur. Monsieur MacGuigan?

M. MacGuigan: Je voudrais m'opposer à cet amendement, monsieur le président. Je crois pour ma part, qu'il ne s'agit pas que le gouvernement ait affaire à légiférer sur ce qui se passe dans les chambres à coucher de la nation. Je crois qu'à notre époque, ce serait une mesure rétrograde. La population s'attend à ce que la Loi ne s'occupe plus des questions privées car ce n'est plus son domaine. C'est ce que nous ferions si nous adoptions l'article dans sa teneur actuelle. Et c'est la raison pour laquelle je m'oppose à l'amendement de M. Woolliams.

Le président: Monsieur MacEwan?

M. MacEwan: Un dernier mot. Je ne puis pas accepter les paroles de M. MacGuigan. Si c'est l'interprétation acceptée au 20ième siècle, ce n'est pas l'impression que j'ai. Je suis d'accord avec l'amendement. Ceci ne change rien à la situation. C'est une question qui ne devrait pas être traitée par le Code criminel, mais qui est d'un autre domaine. C'est la raison pour laquelle je suis tout à fait d'accord avec l'amendement de M. Woolliams.

M. Hogarth: Je ne comprends pas les raisons qui justifient cet amendement. Si je comprends bien M. Woolliams, il a d'abord proposé un amendement en vue de mettre hors de cette Loi deux personnes qui auraient des rapports sexuels avec un animal. C'était sa première motion. Comme elle a été rejetée, vous n'allez pas exempter deux personnes seules qui commettent un acte entre elles.

M. Woolliams: J'invoque le règlement. Ce n'est pas l'attitude que j'avais prise. J'ai dit bien clairement que j'ai proposé l'amendement pour modifier la Loi pour éclaircir un point de vue. Il faut aussi savoir si vous êtes d'accord avec la philosophie de la loi.

M. Hogarth: Je vois. Vous semblez ne pas être d'accord avec la philosophie de la Loi, mais si elle doit être adoptée dans sa forme

[*Texte*]

in which it appears in proposed Section 149A it should have the animal included. Is that what you are saying?

Mr. Woolliams: No, "except."

Mr. Hogarth: "Except", I see.

Mr. Woolliams: I do not think the government should be legalizing sexual relations between animals and people.

An hon. Member: Right.

The Chairman: Are there any further comments?

Mr. Hogarth: I have a comment to make. I agree entirely with Mr. MacGuigan that the law has no place in the bedrooms of the nation. I have some reservations about proposed Section 149A simply because in other parts of the Criminal Code we have not moved to take care of the situation with respect to male prostitution. It appears to me that almost becomes legalized, with the exception of "living off the avails". If the common law applies to male prostitution as it does to female prostitution, I do not think that is of much assistance to us.

However, apart from that, I think in an enlightened society homosexual acts must be treated as the acts of neurotic persons and I do not think people should ever be punished merely because they suffer from some mental neuroses. I cannot understand the rationale of leaving the law as it is and saying that it should be removed from the Criminal Code and dealt with in some health and welfare statute. We are not doing that, we are putting these people in jail and I think that is the wrong place to put people with that type of neuroses. Therefore I wholeheartedly support proposed Section 149A, although I may have some further observations to make when the question is put to the Committee.

• 1600

The Chairman: Mr. Chappell.

Mr. Chappell: Mr. Chairman, as I understand it, if the motion carried and something else was not proposed and accepted that Section 149 would remain as it is and all adults, including husband and wife, would be committing a crime if they performed an act of gross indecency. Those words sound pretty terrible but as I understand from any reading I have done, there is no definition. It has been a subjective test to the judge or jury depending on their personal views as to proper behaviour.

[*Interprétation*]

actuelle et avec l'article 149A, il faudrait y inclure les animaux. C'est ce que vous voulez dire?

M. Woolliams: Non, «à l'exception».

M. Hogarth: «A l'exception», je vois.

M. Woolliams: Je ne crois pas que le gouvernement devrait légaliser les relations sexuelles entre personnes et animaux.

Une voix: C'est exact.

Le président: Quelqu'un a-t-il d'autres remarques?

M. Hogarth: Monsieur le président, j'ai une observation à formuler. Je suis tout à fait d'accord avec M. MacGuigan. Je crois que la Loi n'a rien à voir avec ce qui se passe dans les chambres à coucher du pays. J'éprouve des réserves au sujet de l'article 149A parce que nous n'avons pas prévu ailleurs dans le Code de dispositions au sujet de la prostitution des hommes. Cela me semble presque légalisé, à l'exception de «vivant des fruits de». Si la Loi s'applique à la prostitution des femmes comme à la prostitution des hommes, ceci n'aide guère à régler le problème.

Je crois que dans une société éclairée, les actes d'homosexualité sont des actes de personnes névrosées. Et je ne crois pas qu'on doive punir les gens qui souffrent de névrose. Je ne vois pas pourquoi on laisse la Loi telle qu'elle est à l'heure actuelle, et j'estime qu'il faudrait renvoyer toute la question dans une loi sur la santé et le bien-être. Car à l'heure actuelle on envoie les homosexuels dans les prisons et je crois que c'est bien le plus mauvais endroit où l'on puisse envoyer quelqu'un qui souffre de ce genre de névrose. J'accorde donc mon appui total à l'article 149A tel que proposé. J'aurai cependant d'autres remarques lorsque la question entière reviendra devant le Comité.

Le président: Monsieur Chappell.

M. Chappell: Monsieur le président, si je comprends bien, si la motion est adoptée, et si rien d'autre n'est proposé et accepté, l'article 149A demeurera tel qu'il est à l'heure actuelle, et tous les adultes, y compris les maris et leurs épouses, commettraient un crime s'ils accomplissaient un acte de «grossière indécence». Ces paroles sont assez terribles car, d'après mes lectures, cela n'a jamais été défini. Il s'est toujours agi de critères subjectifs du juge et du jury sur ce qui, d'après eux, constitue une façon convenable de se conduire.

[Text]

I think the vast majority of the public consider it archaic and almost brutal that the relationship between a husband and wife should be interpreted by an outsider and that in certain cases a label of "gross indecency" should be hung on it. Therefore I am opposed to the motion.

Mr. Alexander: Mr. Chairman, I am a new member of the Committee and perhaps the Minister has given us a statement as to the rationale and philosophy behind this proposed Section 149A—I do not know whether he has or not—but prior to me asking him if he has given such a statement could you tell me if you have any knowledge as to the number of prosecutions that have come to light as a result of activity between husband and wife, which one could term "gross indecency"?

Mr. Hogarth: Regina Wishart.

Mr. Turner (Ottawa-Carleton): I have asked the law office of the Crown. They do not know of a case where prosecution has involved a charge under Sections 147 or 149 for an offence as between husband and wife. We are not talking about the bestiality of Wishart. We are talking about an offence involving gross indecency as between husband and wife. I recall a case somewhere in the United States, one of the northern states, where . .

Mr. Murphy: Out west in Canada, between an engaged couple.

Mr. Turner (Ottawa-Carleton): That was between man and woman, but it was not between husband and wife. But as between husband and wife there was a case in one of the northern states in the United States, where there was no defence because it was held on a subjective test to be a question of gross indecency. But it happened to be between husband and wife, and that was no defence.

Mr. Alexander: Perhaps the Minister could indicate to me—and this might clarify a great deal—if the amendment is based upon the committee of 12 men and three women? I do not seem to have heard of anything else, except what was read under the chairmanship of Sir John Wolfenden, where in their wisdom, they went into this matter fairly thoroughly.

What is the philosophy behind the bringing forth of Section 149A, or what is the rationale behind it?

Mr. Turner (Ottawa-Carleton): The rationale, as you correctly surmised in your opening remarks, Mr. Alexander, was pre-

[Interpretation]

La majorité des gens estiment qu'il s'agit d'une mesure archaïque et brutale que de faire interpréter par quelqu'un de l'extérieur les rapports qui existent entre mari et femme. Et dans certains cas, ceux-ci peuvent être jugés comme constituant un acte de grossière indécence. Je m'oppose donc à la motion.

M. Alexander: Je trouve assez difficile de comprendre la philosophie qui est à la base de l'article 149A. Pourriez-vous me dire si vous avez une idée du nombre des causes de grossière indécence qui ont pu être suscitées par des actes entre mari et femme?

M. Hogarth: Regina Wishart.

M. Turner (Ottawa-Carleton): J'ai demandé au conseiller juridique de la Couronne. Il ne se souvient pas du cas où il y a eu des accusations portées sous l'article 147 ou 149 au sujet des rapports entre époux. On ne parle pas de la bestialité de Wishart, mais nous parlons de l'indécence grossière entre époux. Je me souviens qu'aux États-Unis il y a eu un cas dans les états du nord.

M. Murphy: C'était dans l'ouest du Canada entre des fiancés.

M. Turner (Ottawa-Carleton): C'était entre un homme et une femme, mais pas entre un époux et sa femme. Mais il y a eu une instance dans les états du nord aux États-Unis. Vu que cela avait été la grossière indécence entre époux et femme il n'y a pas eu de procès.

M. Alexander: Peut-être Monsieur le Ministre pourrait m'indiquer et cela mettra certaines questions au choix si la modification est basée sur le jugement du comité composé de douze hommes et trois femmes. Je ne connais rien d'autre sauf le comité sous la présidence de Sir John Wolfenden où ils se sont assez appesantis sur ce sujet. Quelle est la philosophie qui a inspiré cet article 149A? Quel est le raisonnement?

M. Turner (Ottawa-Carleton): Le raisonnement, comme vous l'avez déjà remarqué au début, Monsieur Alexander, a été soumis à la

[Texte]

sented by me both in the House and when I introduced the clause in Committee. Briefly it is that we believe that the law and morals are two separate philosophical propositions.

What is necessarily immoral is not necessarily illegal; and what is necessarily illegal is not necessarily immoral; and that there are aspects of human life and relationships between people, which, although on the basis of subjective judgment in a pluralistic society might well be considered to be immoral, ought better be left to private morality than subject to public order within the strictures of the criminal law. And it is the philosophy, or opinion, of the government that as between consenting adults in private—no corruption of a minor—the acts contemplated in Section 147—homosexual acts particularly—ought not to be within the purview of the criminal law.

This does not mean that the government, or society, is necessarily condoning, or promoting, or encouraging, this type of act between adults. It is merely saying that it is a matter for private morality and not a question for public law.

The Chairman: Mr. Alexander?

Mr. Alexander: Mr. Turner, with all due respect, I beg to differ. You say that the government is not encouraging it or condon-

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ing it, but I can read this particular amendment in no other way than as being permissive legislation, or, in fact, that you are actually condoning certain acts between husband and wife. It appears to me that this is permissive legislation; in other words, that you are really condoning it.

Mr. Turner (Ottawa-Carleton): Let me put this to you, Mr. Alexander. Are we condoning fornication because fornication is not a crime within the Criminal Code? Are we condoning adultery because adultery is not a crime within the Criminal Code?

Mr. Alexander: Yes; but let us restrict our remarks to Section 149. This is what we are actually dealing with. I am wondering how you can come to this conclusion when you make an exception which, in my interpretation, is really permissive and condoning. Perhaps we will never see eye-to-eye on this, but that is the interpretation that I put on Section 149A.

Mr. Turner (Ottawa-Carleton): I have to disagree. The fact that we are removing public law in its criminal aspects from some types of conduct such as homosexuality between consenting adults in private and

[Interprétation]

Chambre et au Comité par moi-même. Nous sommes d'avis que les questions de loi et de morales sont deux questions tout à fait différentes.

Ce qui est immoral n'est pas nécessairement illégal. Ce qui est illégal n'est pas nécessairement immoral. Il y a des aspects de la vie humaine, des rapports entre des personnes qui, basés sur un jugement subjectif dans une société pluraliste seraient peut-être immoraux, mais doivent être jugés par la moralité privée plutôt qu'être assujettis au code criminel. La philosophie ou le principe du gouvernement est qu'entre des adultes consentants en privé il n'y a pas de corruption d'un mineur et que les actes discutés sous l'article 147, c'est-à-dire les actes homosexuels, ne devraient pas figurer dans le Code criminel. Ceci ne veut pas dire que le gouvernement ou la société pardonnent, promouvoient ou encouragent ce genre d'actes entre des adultes. La loi dit simplement qu'il s'agit de moralité privée et non pas d'une question de loi publique.

Le président: Monsieur Alexander.

M. Alexander: Monsieur Turner. Vous dites que le gouvernement ne l'encourage pas ou ne le pardonne pas, mais je ne peux comprendre cette modification autrement qu'une législation qui permet ou pardonne certains actes entre époux. Il me semble que c'est une législation qui les permet, c'est-à-dire qui les pardonne.

M. Turner (Ottawa-Carleton): J'aimerais vous poser cette question, docteur Alexander. Est-ce que nous pardonnons la fornication parce qu'elle ne figure pas dans le Code criminel? que nous pardonnons l'adultère parce que l'adultère n'est pas un crime dans le Code criminel?

M. Alexander: Oui, mais il faudrait se limiter à l'article 149 que nous discutons. Je me demande comment vous pouvez arriver à cette conclusion lorsque vous faites une exception qui, dans mon interprétation, est une législation qui permet et pardonne. Nous ne serons probablement jamais d'accord là-dessus, mais c'est de cette façon que j'interprète l'article 149A.

M. Turner (Ottawa-Carleton): Je dois vous contredire. Le fait que nous supprimons la loi publique dans ses aspects criminels de certaines conduites comme l'homosexualité entre deux adultes consentants dans l'intimité; l'a-

[Text]

therapeutic abortion within the conditions specified in the amendments in the Bill as with the act of fornication, or the act of adultery—has surely never been interpreted as condonation, or promotion, or encouragement by the state, of that type of conduct.

Mr. Alexander: It seems to me to boil down to our really saying that whatever is done in the house is all right; that regardless of what the outcome may be in the long run, it is all right. So I say that it condones the actions of adults within the house, regardless of how gruesome or how horrendous the action may be. We say that it is all right. This is all I am saying.

I am merely trying to find out how you reach the rationale that it is neither permissive nor condoning.

We could go on and on, because I am going to stand pat on that and I think the Minister is going to stand pat on what he says.

Mr. Turner (Ottawa-Carleton): Another philosophical bridge that we are not going to narrow. I wanted to speak briefly, though, if I may, on the remark made by Mr. Hogarth about male prostitution.

There appears to us to be no reason that prosecutions should not be successful against male prostitution as a violation of Sections 182 and 183 of the Criminal Code.

Relative to that, it might be noted that the ordinary dictionary meaning of the word "prostitute" includes a male prostitute. For example, in Webster's Third New International Dictionary, 1964 Edition, the word "prostitute" is said to include:

A male who engages in homosexual practices for payment.

On the other hand, there may be some difficulty with Section 184 subsection (1) paragraph (j) but if paragraph (j) is read in the context of the other 10 paragraphs of subsection (1) of Section 184 I think it could be argued that what is meant in that paragraph is female prostitution only.

We have been unable to discover any reported case on the subject, but the advice I have, Mr. Chairman, is that this in no way would affect the situation relative to male prostitution.

The Chairman: Mr. Hogarth?

Mr. Hogarth: Section 182 deals with bawdy houses, so that assuming your remarks to be right about that section, 182 could only apply to a common bawdy house in which there were male prostitutes; is that not so?

[Interpretation]

vortement thérapeutique dans les conditions déterminées par les amendements du Bill et les actes de fornication ou d'adultère. Cela n'a jamais été interprété comme des conduites que le gouvernement pardonne, promouvoit ou encourage.

M. Alexander: Il me semble que ce que nous disons, c'est ce que l'on fait dans un foyer, est en ordre sans tenir compte des résultats à long terme. Je déclare que vous êtes en train de pardonner des actes d'adultère qui se passent dans un foyer, n'importe, quelle que soit l'horreur de l'acte. Nous disons que c'est très bien. Je me demandais juste comment vous aviez pu raisonner pour en arriver à une telle conclusion que ce n'est ni permissif ni pardonnant. On pourrait continuer à *ad infinitum*, parce que je maintiens mon point de vue et le ministre le maintient aussi.

M. Turner (Ottawa-Carleton): Oui, il s'agit d'un autre point philosophique que l'on ne saurait approcher. J'aurais voulu parler des observations faites par M. Hogarth en ce qui concerne la prostitution des mâles. Il me semble qu'il n'y a aucune raison pourquoi des procès ne pourraient pas avoir du succès contre la prostitution des mâles aux termes des articles 182 et 183 du Code criminel. On pourrait noter dans le dictionnaire la définition du mot «prostitué», ce qui comprend le prostitué mâle. Regardez la troisième édition internationale de Webster pour 1964 où le mot «prostitué» embrasse «un mâle qui commet des actes d'homosexualité contre paiement.» Mais, d'autre part, quelques difficultés surgissent quant à la section 184, sous-alinéa (1), paragraphe j). Il est possible que le paragraphe j) soit lu dans le contexte de l'autre paragraphe au sous-alinéa (1) de 184. On pourrait opposer que ce qu'on veut dire est la prostitution des femelles seulement. Nous n'avons pu découvrir aucun procès, mais l'on me dit, monsieur le président, que ceci ne changera pas la situation quant à la prostitution des mâles.

Le président: Monsieur Hogarth.

M. Hogarth: On parle de maisons de prostitution. Donc, l'article 182, si on conclut que vos remarques sont justes, ne pourrait être appliqué qu'à une maison où il y aurait des prostitués mâles. Est-ce que ce n'est pas juste?

[Texte]

Mr. Turner (Ottawa-Carleton): That is right; Section 182 deals with common bawdy houses.

Mr. Hogarth: It is my understanding that the only part of Section 184 that could possibly be applicable is the section dealing with living off the avails; is that not so?

(j) being a male person lives wholly or in part on the avails of prostitution, or

Mr. Turner (Ottawa-Carleton): They would be avails to him.

Mr. Hogarth: It is my understanding that under the common law, a female prostitute cannot be convicted under that Section unless she participates with her procurer, or somebody else, in the avails of her own prostitution. That is to say, prostitution is not against the law, *per se*; and it would appear to me that the male person who acted alone and reaped his rewards from his own nefarious acts could not be charged under that section. These are the points that I wanted to make.

Mr. Turner (Ottawa-Carleton): We have no case law on that.

Mr. Hogarth: I think there is a substantial body of it in the common law, is there not?

Mr. Christie: We would have to interpret the statute. It would not necessarily be governed by common law.

Mr. Hogarth: I see; then, of course, the vagrancy sections do not apply at all?

Mr. Christie: That is correct.

Mr. Hogarth: Because they refer to herself.

Mr. Turner (Ottawa-Carleton): That is right.

Mr. Hogarth: They will not go that far.

Mr. Turner (Ottawa-Carleton): The Interpretation Act does not reverse.

The Chairman: Gentlemen, we have before us that Bill C-150 be amended by deleting all of Section 149A. All those in favour? All those opposed?

Amendment negatived.

Mr. Hogarth: Mr. Chairman, I have further remarks before Section 149A is agreed to. Mr. Minister, in dealing with this problem it was drawn to my attention at a panel discussion last week at home on the West Coast...

[Interprétation]

M. Turner (Ottawa-Carleton): Oui, c'est juste. L'article 182 parle de maisons de prostitution.

M. Hogarth: La seule partie dans 184 qui pourrait être applicable, c'est où l'on parle d'un homme qui vit de l'argent gagné par la prostitution. N'est-ce pas le cas?

M. Turner: Il s'agirait d'un gain.

M. Hogarth: Selon le *Common Law*, une prostituée femelle ne peut pas être responsable sous cet article à moins qu'elle ne participe avec le pourvoyeur. Ou quelqu'un d'autre ait cet argent par sa prostitution. C'est-à-dire, la prostitution n'est pas contre la loi *per se* et il me semble que la personne mâle qui agissait seule et qui en gagnait sa vie ne pourrait pas être poursuivi aux termes de cet article.

M. Turner (Ottawa-Carleton): Nous n'avons aucun précédent.

M. Hogarth: Je pense que dans le *Common Law*, il y en a une grande partie.

M. Christie: Il faudrait interpréter le statut qui n'est pas régi par le *Common Law*.

M. Hogarth: Je comprends. Dans ce cas-là les articles relatifs au vagabondage ne s'y appliquent pas du tout.

M. Christie: C'est juste.

M. Hogarth: Parce qu'ils se rapportent à eux-mêmes.

M. Turner (Ottawa-Carleton): C'est juste.

M. Hogarth: On n'ira pas aussi loin que cela.

M. Turner (Ottawa-Carleton): La Loi d'interprétation ne renverse pas.

Le président: Nous avons cet amendement que la loi C-150 soit amendée en en rayant toute la section 149A. Tous ceux en faveur? Tous ceux qui sont opposés.

La motion est défaite.

M. Hogarth: Monsieur le président, j'ai d'autres observations à formuler avant que l'article 149A soit adopté.

Monsieur le ministre, en traitant de ce problème, j'ai été mis au courant du problème, lors d'une discussion qui a lieu chez moi sur la Côte Ouest...

[Text]

Mr. Turner (Ottawa-Carleton): Sorry I was not able to make that one, Mr. Hogarth.

Mr. Hogarth: Well, wished that you were there. You could have answered it to them at that time. But why is it that gross indecency will not be an offence for two persons over 21, whereas two persons 20 years of age will be liable to the imprisonment imposed by the Section, namely, 14 years in 147 and 5 years in 149? It appears to me that that is a very arbitrary decision, is it not?

Mr. Turner (Ottawa-Carleton): Yes, it is arbitrary.

Mr. Hogarth: What is the rationale behind that?

Mr. Turner (Ottawa-Carleton): To make it perfectly clear that we were not involving minors in the situation. Just as there is a gradation of ages at 14, 16, 18 and 21 in the series of offences involving seduction of a female, it was felt that the amendment should apply only to consenting adults.

Mr. Woolliams: Sort of brought it in line with the liquor acts. It is just about as reasonable.

Mr. Turner (Ottawa-Carleton): Well, you know, 21 has been the age and 21 is the age we have adopted and it is arbitrary.

Mr. Hogarth: My concern is that a male and female person under the age of 21 may indulge in what you would call ordinary acts of indecency with impunity—I mean, putting aside for the moment contributing to juvenile delinquency. Between the ages of 18 and 21 there is no offence for ordinary acts of sexual intercourse and I cannot understand why these acts which were referred to as gross indecency would all of a sudden become so reprehensible when a year later they are not even against the law.

Mr. Turner (Ottawa-Carleton): We are not conceding for a moment that homosexual acts are in any way to be equated to ordinary, normal acts of intercourse. The only parallel that I wanted to draw is that we have always made certain exemptions protecting young people either from seduction or corruption, and in this case from, I suppose, being preyed upon by older men. That is the philosophy behind drawing a line, and drawing a line is an arbitrary effort and it was drawn at 21.

Mr. Hogarth: I just want to suggest that I understood you to say in your opening

[Interpretation]

M. Turner (Ottawa-Carleton): Je suis désolé, je n'y étais pas, M. Hogarth.

M. Hogarth: Nous aurions aimé que vous y soyez. Vous auriez pu répondre aux questions. Comment se fait-il que l'indécence, lorsqu'elle est le fait de deux personnes de plus que 21 ans n'est pas un délit, alors que s'il s'agit de deux personnes de 20 ans elles sont passibles d'emprisonnement, 14 ans en vertu de l'article 147 et 5 ans en vertu de l'article 149. Il me semble que c'est une décision très arbitraire, n'est-ce pas?

M. Turner (Ottawa-Carleton): Oui, c'est arbitraire.

M. Hogarth: Quel est le rationalisme derrière tout cela?

M. Turner (Ottawa-Carleton): Nous ne voulions pas que les mineurs soient inclus dans cela. De la même façon qu'il y a une gradation d'âge 14, 16, 18 et 21 ans, dans les délits de séduction on a cru bon que l'amendement ne s'applique qu'aux adultes consentants.

M. Woolliams: Pour être en accord avec les lois sur la boisson. C'est à peu près aussi raisonnable.

M. Turner (Ottawa-Carleton): 21 ans a été l'âge de majorité jusqu'ici, et c'est l'âge que nous avons adopté, c'est une mesure purement arbitraire.

M. Hogarth: Ce qui me préoccupe c'est ceci. Un homme et une femme qui n'a pas 21 ans peuvent se livrer à des actes d'indécence ordinaires en toute impunité si l'on exclut la délinquance juvénile. Entre 18 et 21 il n'y a pas de violation de la Loi pour les actes sexuels ordinaires et je ne comprends pas pourquoi ces actes qui y sont décrits comme indécence grossière deviennent si répréhensibles, quand un an plus tard il ne sont plus contre la Loi.

M. Turner (Ottawa-Carleton): Nous ne disons pas pour le moment que les actes homosexuels peuvent être considérés comme des rapports sexuels normaux. Le seul parallèle que je voulais souligner c'est que nous avons toujours fait des exceptions pour protéger les jeunes contre la séduction et la corruption, afin qu'ils ne soient pas les victimes d'hommes plus âgés. C'est la raison de cette limite, il en fallait une et nous avons choisi 21 ans arbitrairement.

M. Hogarth: J'avais compris que le rapport Wolfenden indiquait que les jeunes gens n'ont

[*Texte*]

remarks that the Wolfenden Report indicated that young people do not need protection from older homosexuals.

Mr. Turner (Ottawa-Carleton): That is correct but I think, judging from the attitude, for instance, expressed by Mr. Alexander, which I recognize as a legitimate point of view, it would be even more unpalatable if there were not some protection given to younger people. And so we have recognized that that line should be drawn and we do not want

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this new section in any way to be interpreted as abetting corruption. We do not think statistically it does. But we do not want any feeling abroad in this country that we are in any way leaving the statute open to that interpretation.

Mr. Christie draws to my attention too that when we deal with the question of consent, it is certainly within the criminal law and the common law that 21 has so far been equated with the ability freely to give consent on one's own behalf.

Mr. Hogarth: You mean that in the criminal law the *sui juris* age is 21?

Mr. Turner (Ottawa-Carleton): Just historically. It is a historical concept that consent is given freely after majority is obtained.

Mr. Hogarth: I only have one question left. You say that you want to protect young people. You take two homosexual males at the age of 20 years that are caught performing these acts. They are subject to the 14 years or the 5 years imprisonment, whereas if they were a year older they would not be subject to any imprisonment at all. What protection is the law giving them?

Mr. Turner (Ottawa-Carleton): You could have said the same thing had the age been 20.

Mr. Hogarth: Yes, or we could have said the same thing if you had left it with juvenile delinquency.

Mr. Turner (Ottawa-Carleton): Well, this was a policy decision, Mr. Hogarth. It is as arbitrary as that but I think there is a lot of historical justification for it and a lot of justification for moving public opinion forward.

The Chairman: Mr. McCleave.

Mr. McCleave: Mr. Chairman, the amendment I will move arises out of the question I put to the Minister and the witnesses earlier,

[*Interprétation*]

pas besoin d'être protégés contre les homosexuels plus âgés.

M. Turner (Ottawa-Carleton): Cela est juste, oui. Mais, en jugeant du point de vue exprimé par M. Alexander, que je reconnais être tout à fait justifiable, ce serait encore moins acceptable s'il n'y avait pas de protection pour les plus jeunes. Nous avons reconnu qu'il fallait fixer une limite. Nous ne voulons pas que l'on interprète ce nouvel article

comme un encouragement à la corruption. Statistiquement ce n'en est pas un, mais nous ne voulons pas que le pays en arrive à la conclusion que la Loi puisse être interprétée de cette façon.

M. Christie attire mon attention sur le fait que lorsqu'on discute la question du consentement, dans le Code criminel et dans le droit coutumier, 21 ans a été admis comme l'âge où on peut donner son consentement volontairement et librement.

M. Hogarth: Vous voulez dire que dans le Code criminel l'âge *sui juris* est 21 ans?

M. Turner (Ottawa-Carleton): C'est là le concept traditionnel, le consentement est donné librement lorsque la personne est majeure.

M. Hogarth: J'ai une dernière question à poser. Vous voulez protéger les jeunes personnes. Vous prenez deux homosexuels de 20 ans; surpris en flagrant délit ils sont passibles de 14 ans ou de 5 ans d'emprisonnement, tandis que, s'ils avaient 21 ans, ils ne seraient pas passibles d'emprisonnement. Quelle protection la Loi donne-t-elle à ces jeunes gens?

M. Turner (Ottawa-Carleton): Vous auriez pu dire la même chose si l'âge avait été de moins de 20 ans.

M. Hogarth: Oui, si vous l'aviez laissé sous le titre de la délinquance juvénile.

M. Turner (Ottawa-Carleton): C'est une question de politique, M. Hogarth. C'est arbitraire, mais je pense qu'il y a de nombreuses justifications historiques. Et, nous essayons de faire progresser un peu l'opinion publique.

Le président: Monsieur McCleave?

M. McCleave: L'amendement que je vais proposer résulte de la question que j'ai posée au ministre et au témoin et qui a trait à

[Text]

and it deals with 149A (2) (b) at page 24, where it says:

a person shall be deemed not to consent to the commission of an act (i) if the consent is extorted by threats or fear of bodily harm or is obtained by false and fraudulent misrepresentations...

[Interpretation]

l'alinéa b) du paragraphe (2) de l'article 149, page 24, qui dit:

b) une personne est réputée ne pas consentir à commettre un acte.
(i) si le consentement est extorqué par la menace ou la peur de lésions corporelles ou s'il est obtenu au moyen de représentations fausses ou trompeuses...

And the argument I made then was that this seems to be on a parallel with the section on rape dealing with consent; that actually the rape itself involves the ingredient of assault or force, whereas a homosexual act does not. And I am fortified in that opinion by a decision of the Supreme Court of Ontario, *Rex vs Nugent*, in 1955 where a person was charged on separate counts for rape and assault occasioning bodily harm. The jury brought in the verdict of attempted rape and assault and both these charges arose out of the same facts and the court held that the conviction for assault would be quashed as it is an ingredient of the offence of rape. Therefore, since rape does involve assault but homosexuality is a different matter entirely and may involve assault or may not, we should consider adding one word, which would make the subparagraph read as follows:

(b) a person shall be deemed not to consent to the commission of an act (i) if the consent is extorted by force, threats...

adding the word "force". The Department was good enough to draw it up and leave me to flounder round as best I could to present it to the Committee. But really I think that we cannot use an exact parallel between rape and a homosexual act and that the amendment should carry to define clearly what consent is not.

Mr. Turner (Ottawa-Carleton): Well, Mr. Chairman, we do not take—by we, I mean the Department does not take a strong view one way or the other and I am prepared to leave it to a vote of the Committee. There is useful philosophical and logical comparison such as the one Mr. McCleave has made between rape, which implies the use of force, as distinct from this new section. On the other hand, the word "consent" of itself implies an absence of force. But if for pur-

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poses of clarification the Committee should want to add that word, then we take no position one way or the other. I am prepared to leave it to the Committee.

The Chairman: Mr. Hogarth.

Et mon argument, c'est que ceci semble être parallèle à l'article qui a trait au viol. Et, le viol lui-même implique l'utilisation de la force corporelle tandis qu'un acte homosexuel ne comporte pas cet élément-là. Et j'appuie mes dires sur une décision de la cour suprême de l'Ontario, *La Reine contre Nugent*, en 1955, où une personne fut accusée séparément de viol et d'attaque corporelle. Et le jury a décidé qu'il y avait eu tentative de viol et attaque corporelle. La cour a décidé que la personne n'était pas coupable d'attaque corporelle parce que cela faisait partie du viol. Mais l'homosexualité est une question différente. Il peut y avoir attaque corporelle ou non. Il faudrait songer à ajouter un mot et l'alinéa b) se lirait comme suit:

b) une personne est réputée ne pas consentir à commettre un acte.
(i) si le consentement est extorqué par la force, la menace...

J'ajoute donc le mot «force». Le ministère a rédigé mon amendement et m'a laissé me débrouiller pour le présenter. Je pense qu'on ne peut pas établir de parallèle entre le viol et des actes d'homosexualité et que la modification devrait être adoptée par le Comité pour définir le consentement.

M. Turner (Ottawa-Carleton): Eh bien, monsieur le président, nous, c'est-à-dire le ministère n'a pas un point de vue intransigeant sur cette question. Je laisse le Comité décider. Il y a des comparaisons logiques, comme l'a fait remarquer M. McCleave, entre le viol, qui sous-entend l'utilisation de la force et ce nouveau paragraphe. Le mot «consentement» implique l'absence de force, mais si pour éclaircir le paragraphe le Comité désire ajouter le mot «force» je suis prêt à m'en remettre à vous.

Le président: Monsieur Hogarth.

[Texte]

Mr. Hogarth: Mr. Chairman, the defect in this amendment arises out of the fact that there is no consent obtained by force. There may be submission but there is no consent. Now if you turn to Section 135, the definition of rape is:

135. A male person commits rape when he has sexual intercourse with a female person who is not his wife,

(a) without her consent, or

(b) with her consent if the consent

(i) is extorted . .

and I think the judicial authorities are quite clear that a submission obtained by force is not a consent; that is, force vitiates consent. It may be a submission but it is not a consent. The latter sections provide for the situation where the woman consents, that is to say, she does not only submit; she consents. But the consent is extorted by threats or fear of bodily harm or the personation of her husband and so on. And if we put this word in here, it implies that with force there is consent. With force there is never anything more than submission. And therefore I think that the law should be comparative between 135 and 149(2)(b), and for that reason I propose to vote against the amendment.

The Chairman: Mr. McCleave.

Mr. McCleave: If I could answer the argument very briefly, one would not think there was consent either if there were elements of threats or fear of bodily harm or an element of fraud, and yet all those three factors are spelled out. So I think Mr. Hogarth's argument falls by the wayside on that ground alone.

I move: That Bill C-150 be amended by striking out line 21 on page 24 and substituting the following: 'force, threats or fear of bodily harm or is'.

Amendment agreed to.

Clause 149A., as amended, agreed to.

The Chairman: Turn to page 35, Clause 16, the breathalizer sections. Mr. Turner.

Mr. Turner (Ottawa-Carleton): I wonder if I might address a few words to the Committee, Mr. Chairman?

The Chairman: Yes, Mr. Turner.

Mr. Turner (Ottawa-Carleton): Mr. Chairman and gentlemen, as I understand the Committee's action, the Committee has

[Interprétation]

M. Hogarth: Le défaut de cet amendement découle du fait qu'il n'y a pas de consentement obtenu par la force, soumission, peut-être, mais pas consentement. Prenons l'article 135, la définition du viol est:

135. Une personne du sexe masculin commet un viol en ayant des rapports sexuels avec une personne du sexe féminin qui n'est pas son épouse,

a) sans le consentement de cette personne du sexe féminin, ou

b) avec le consentement de cette dernière, si le consentement

(i) est arraché. . .

Et les autorités judiciaires voient clairement qu'une soumission obtenue par la force n'est pas un consentement. L'utilisation de la force annule le consentement. Les alinéas suivants parlent de la situation où une femme donne son consentement. Mais le consentement est extorqué par la peur de blessures corporelles ou l'impersonnification du mari ou autre. Et, si nous incluons le mot ici, ceci implique qu'avec la force il y a pas consentement. Avec la force, il n'y a jamais autre chose que la soumission. Et, je pense que la Loi devrait être comparable dans l'article 135 et l'article 149 et pour cette raison je me propose de voter contre cette amendement.

Le président: Monsieur McCleave.

M. McCleave: Pour répondre brièvement, je ne pense pas qu'il y avait consentement, même s'il a été extorqué par la menace ou la peur de lésions corporelles, ou obtenu au moyen de fausses représentations ces trois facteurs sont tous relevés. L'argument de M. Hogarth ne tient pas debout pour cette unique raison.

Je propose: «Que le Bill C-150 soit modifié en rayant la ligne 21 de la page 24, et en la remplaçant par: «Par la force, la menace ou la peur de lésions corporelles».

La modification est adoptée.

L'article 149A modifié, est adopté.

Le président: Passons à la page 35, article 16. La section sur l'ivressomètre. Monsieur Turner.

M. Turner (Ottawa-Carleton): Je me demande si je pourrais parler au Comité, monsieur le président.

Le président: Oui, monsieur Turner?

M. Turner (Ottawa-Carleton): Monsieur le président, messieurs, si je comprends la tâche du Comité, le Comité a approuvé la substance

[Text]

approved the substance of the sections dealing with drinking and driving in principle, but has stood over those aspects of the three offences as they relate to the penalties to be imposed. If I can set the issues forth as I understand them to have been put to me, and then give you my reaction to them, I would like to do that before listening to the debate of the Committee.

There are three offences here. There is the offence of impaired driving which is continued from the present Code. There is the new offence of having a statutory level of alcohol in the blood, .08 per cent. And there is the third offence of failing to take the compulsory breathalyzer test that establishes that statutory level.

Two types of argument were presented to me. One argument was that the penalty as between the statutory offence of having a certain amount of alcohol in the blood should not have attached to it the same penalties as the failure to take the compulsory breathalyzer test.

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In other words, if someone without reasonable excuse refused to submit to the breathalyzer test when requested by a peace officer who had reasonable and probable cause for suspecting that he was impaired, then penalties attaching to that offence should not be as severe as if, having taken the test, he was found to have a statutory blood alcohol content of over .08 per cent. As I understand the argument, there was a feeling among some members that the refusal to take a test, based as it was on reasonable and probable cause of the peace officer or involving a certain amount of what they felt was self-incrimination, should not be equated.

My answer to that is that I cannot see how the compulsory breathalyzer test would be effective at all if the penalty attaching to a non-justifiable refusal to take the test were not the same as the penalty attaching to the blood alcohol content of .08 per cent if the test was taken, because if it were not or if it were less, anybody apprehended by a peace officer on the road would obviously take the option of refusing to take the test because the penalties were lesser, if he had any feeling in his own mind that his blood was close to the statutory limit. And I submit to members that for that reason the penalties ought to be the same between the statutory .08 per cent and the failure to take the test.

[Interpretation]

des articles qui ont trait à la boisson et à la conduite d'une voiture, en principe, mais a réservé les parties des trois infractions qui ont trait aux sanctions à être imposées. Si je peux exprimer les faits comme je les ai compris quand on me les a exposés, et vous exprimer ensuite ma réaction, j'aimerais le faire avant d'écouter les délibérations du Comité.

Il y a ici trois infractions. D'abord, il y a la conduite en état d'ivresse qui est dans le Code actuel. Il y a cette nouvelle infraction, qui est le fait d'avoir une teneur établie par la loi d'alcool dans le sang, soit .08 p. 100. Et la troisième infraction qui est le fait de refuser de se soumettre à l'épreuve à l'ivressomètre qui détermine cette teneur statutaire.

On m'a présenté deux genres d'arguments. L'un était que la peine encourue pour avoir une certaine teneur en alcool dans le sang ne devrait pas être la même que celle qui est encourue pour avoir refusé de se soumettre au test obligatoire de l'ivressomètre.

En d'autres termes, si quelqu'un, sans prétexte raisonnable, refuse de se soumettre à l'épreuve à l'ivressomètre, à la demande d'un agent de la paix qui avait des raisons de soupçonner que les facultés de cette personne étaient affaiblies, les peines infligées pour cette infraction ne devraient pas être aussi sévères que si, l'on avait découvert chez cette personne, après qu'elle s'est soumise à cette épreuve, une teneur en alcool supérieure à 0.08 p. 100. Je crois comprendre, d'après la discussion, que certains députés semblaient être d'avis que le refus de se soumettre à cette épreuve, fondé comme il l'était sur la cause raisonnable et probable de l'agent de la paix ou comportant dans une certaine mesure une accusation en soi-même, ne devrait pas être égalé.

Ma réponse est celle-ci. Je ne vois pas comment l'épreuve obligatoire à l'ivressomètre serait le moins efficace si la peine infligée pour le refus injustifié de se soumettre à l'épreuve n'était pas la même que celle qui est infligée pour une teneur en alcool de 0.8 p. 100, si l'épreuve a été subie, parce que si elle ne l'était pas, toute personne qui serait arrêtée sur la route par un agent de la paix refuserait évidemment de se soumettre à l'épreuve, parce que la peine est moindre, si elle croit avoir plus d'alcool dans le sang que la limite légale. Je sou mets donc à l'approbation des membres que les peines soient les mêmes si la personne refuse de se soumettre à l'épreuve que si elle a .08 p. 100 d'alcool dans le sang.

[Texte]

A more difficult argument presented to me was one presented with great force by Mr. Murphy, and I wrestled with this a good deal. His argument is that, as I understand it, the proposed Section 224, relating to the statutory alcohol blood content of .08 per cent, should not involve the same penalties as the Section 222 relating to impaired driving, the reason being, and he will perhaps want to expand on it, the reason as I understand it, if he would allow me just to summarize his argument by reading a memorandum he sent me, and he nods and acquiesces in that, his argument as he set it forth in a memorandum to me is the following:

By providing that persons having .08 parts per 1000 alcohol in their blood-streams shall be punitively treated in the same way as persons who are convicted of impaired driving, the Department has in fact concluded that the ability of *all* such persons to drive is impaired to the extent that impairment has been defined by judicial decisions under present Section 222. It is my submission

namely, Mr. Murphy's submission

that while it is true that *most* people who are found to have that blood alcohol content are so impaired, *there is not one expert in the field who will say that all such persons are so impaired*. Since the proposed law will obviously apply to *all* drivers in Canada, it will be manifestly unjust when applied to those people whose tolerance to alcohol is greater (for one reason or another) than that of the majority of drivers.

I think that is the crux of his argument. I want to say in answer to that, Mr. Chairman, that to my mind after having reviewed all the evidence available, the medical evidence is convincing that a blood alcohol level of .08 per cent is a distinct and present danger to the people using the highways or on the highways because there is distinct impairment in every driver to some extent at that level. We believe, in the department, that in practice the .08 per cent is likely to be just as serious in terms of risk and danger to the public, as the impaired driving offence. I think it is a mistake to regard it as a lesser offence. I think this is borne out by the medical evidence.

[Interprétation]

Un argument plus difficile me fut soumis avec beaucoup de passion par M. Murphy, et j'y ai beaucoup songé. Cet argument est que le nouvel article 224, qui a trait à la teneur en alcool dans le sang de 0.08 p. 100, ne devrait pas comporter les mêmes peines que l'article 222, qui a trait à la conduite d'une voiture lorsqu'une personne a les facultés affaiblies, la raison en étant, et il voudra sans doute s'étendre sur le sujet, la raison, dis-je, comme je la comprends, s'il me permet de résumer son argument en lisant le mémoire qu'il m'a soumis, et il me signale qu'il accepte, son argument, comme il ne le soumet dans un mémoire, est le suivant:

En permettant aux personnes qui ont 0.08 p. 100 d'alcool dans le sang d'être traitées de la même façon que les gens qui sont reconnus coupables de conduire une voiture lorsque leurs facultés sont affaiblies, le ministère a, de fait, que la capacité de conduire de toutes ces personnes est affaiblie dans la mesure où l'affaiblissement a été défini par des décisions judiciaires en vertu du présent article 222.

Ma proposition est que, c'est-à-dire la proposition de M. Murphy—

s'il est prouvé que la plupart des gens qui ont cette teneur en alcool ont les facultés ainsi affaiblies, il n'y a aucun expert dans le domaine qui puisse dire que toutes ces personnes ont les facultés ainsi affaiblies. Comme la Loi, telle que proposée, s'appliquera à tous les Canadiens qui conduisent des voitures, elle sera manifestement injuste lorsqu'elle sera appliquée aux personnes qui, pour une raison ou pour une autre, sont moins affectées par l'alcool que la majorité des gens qui conduisent des véhicules.

Je crois que c'est là l'essentiel de son argument. Je veux y répondre de la façon suivante, monsieur le président. A mon avis, ayant examiné tous les témoignages qui sont disponibles, le témoignage médical me convainc qu'une teneur en alcool de 0.08 p. 100 dans le sang indique que ces gens sont très dangereux lorsqu'ils conduisent un véhicule sur les grandes routes, parce qu'il y a certainement un affaiblissement distinct chez chaque personne à ce point-là, dans une certaine mesure. Au ministère, nous pensons que 0.08 p. 100 d'alcool dans le sang est en pratique, tout aussi grave, en fonction du risque et du danger envers le public, que l'infraction d'avoir conduit son automobile, avec les facultés affaiblies. Je crois que c'est une erreur de croire que c'est une moindre infraction. Cela résulte sans doute de la preuve médicale.

[Text]

I referred earlier to Dr. Ward Smith's study, "Point zero Eight", the film he made involving skilled racing drivers. Changes were observed between .04 per cent and .08 per cent in the driving ability of every racing

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driver who took part in the study. I refer you again, Mr. Chairman and members, to the Grand Rapids study, and I summarize that again for you. At .08 per cent the driver is more than three times as likely to have an accident as the sober driver. The statistics bear that out, and the selection figure was 8,000 drivers observed over a period of a year. Statistics also indicate that of .08 per cent the driver is almost twice as frequently involved in a serious or almost fatal accident as the sober driver.

The combined effect of these conclusions from practical studies is that far from representing a minor or lesser offence than impaired driving, the level fixed in Section 224 does, in the great majority—in the great sweep—of the cases examined, represent a significant impairment, and in every case a considerable impairment, of the ability to drive safely.

Let me say that the statutory test at .08 per cent, based on a machine—and there may from time to time be variations in the machine, and it is possible that on cross-examination inaccuracies may be pointed out—is still a more accurate objective test than the subjective test applied in impaired driving cases under present Section 223 and under future Section 222.

Mr. Alexander: I beg your pardon, Mr. Turner, did you say that it is a more subjective test their...

Mr. Turner (Ottawa-Carleton): No; that it is a more objective test than the present subjective test under impaired driving. I want to submit to you that it probably gives a sharper definition than do the present rules that will continue to be applied to the impaired driving section.

I want to cite as a precedent for you, for what is worth, the United Kingdom road traffic legislation of 1967, in which the statutory blood alcohol offences are treated on the same basis, with the same penalties, as for the impaired offence. They have the impaired driving offence and they have the statutory level of alcohol in the blood.

[Interpretation]

J'ai parlé, plus tôt, de l'étude du docteur Ward Smith, «Point zéro huit», de son film qui avait trait aux automobilistes qui conduisent des autos de course. Il y a eu des changements quant à la capacité de conduire entre

0.04 et 0.08 p. 100 de teneur en alcool dans le sang de chaque conducteur d'une voiture de course qui a participé à l'étude. Je parle toujours, monsieur le président, et, messieurs les membres de l'étude légale sur les chauffeurs de Grand Rapids et je vous la résume de nouveau. Le chauffeur qui a une teneur en alcool de 0.08 p. 100 dans le sang a trois fois plus de chance d'avoir un accident qu'une personne sobre. Les statistiques indiquent qu'à 0.08 p. 100 le conducteur est impliqué deux fois plus fréquemment dans des accidents graves ou fatals que ne le sont les chauffeurs sobres.

La conclusion est que loin de représenter une infraction mineure à celle de conduite de voiture avec facultés affaiblies des cas étudiés présente des affaiblissements graves et, dans tous les cas un affaiblissement très marqué de l'habileté à conduire une voiture.

Permettez-moi de vous dire que des tests établis à 0.08 p. 100 basés sur les épreuves à l'ivrossomètre (il y a des variations dans les résultats des épreuves, il y a des inexactitudes possibles dans un ivressomètre). Mais c'est encore une épreuve beaucoup plus objective que les jugements subjectifs qui sont appliqués lors d'une infraction pour conduite en état d'ivresse, selon l'article actuel 223 et le futur article 222.

Mr. Alexander: Je vous demande pardon, M. Turner, croyez vous qu'il puisse y avoir un test plus subjectif?

M. Turner (Ottawa-Carleton): Non, je crois que c'est un test plus objectif que le test subjectif actuel pour la conduite en état d'ivresse. Je crois que cela donne une définition plus précise que les règles actuelles qui s'appliquent à la conduite en état d'ivresse. Au Royaume Uni on a rédigé une Loi sur la circulation en 1967 et les délits commis avec la teneur d'alcool réglementaire sont traités de la même façon que ceux commis avec des facultés affaiblies. Je crois qu'il est assez difficile de justifier une façon de procéder différente, car dans le cas de l'infraction qui peut faire l'objet d'un jugement, il n'y a pas tellement de différence par rapport à l'infraction sommaire.

[Texte]

I want to suggest to you also that I believe there is little justification for treating the statutory blood alcohol offence differently from the impaired offence because, as drafted, the basic penalties for the indictable offences are no higher than are those for summary offences. This is one of the few places in the Code where this happens, and we have preserved that aspect of the law.

I also want to say that the first-offence penalty, except for the minimum fine aspect, is lower than the standard penalty for summary conviction offences. So there is latitude here; and even in a case where proceedings by indictment are instituted for a first offence the maximum term of imprisonment is less than the maximum for the ordinary summary conviction offence. These have been built up under the impaired driving law over the years because of the special nature of these offences.

Therefore, Mr. Chairman, I want to say that I believe the medical and research evidence is convincing: that there is significant impairment in the great majority, almost universal experience, of driving; that the statistics show that the rate of involvement of accidents at that statutory level is three times as high as that of a sober driver, and, in terms of a serious or fatal accident, twice as high; that I believe that the statutory offence is more accurate than the impaired driving offence; and that it reflects—and I believe the Committee is going to have to take this into consideration, sir—what we believe to be a necessary policy of this Parliament for a tougher drinking and driving law. It is aimed at the drinking driver, and so far as we are concerned the offences committed, once the amount of alcohol has been consumed, as you enter the automobile to drive it away. Thus, that is the offence—driving an automobile with a certain amount of alcohol in your blood.

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In understand the balance of interests here, but I am asking this Committee to endorse the stand taken in this Bill because I believe that the statistics of death on the highways are such that the policy that Parliament should implement against the drinking driver should be serious enough to insist on the penalties for these three offences being equal across the board. Thank you, Mr. Chairman.

Mr. Alexander: On a point of information, Mr. Chairman. We have at least three offences. What bothers me is that not only can the accused be found guilty under Section 223, but if an indictment is laid he can also be

[Interprétation]

Et la peine qu'on impose dans le cas d'une première condamnation est moins élevée que dans le cas d'une condamnation normale. Et les peines ont été établies avec les années à cause de la nature spéciale de ces délits. Monsieur le président, je crois que les témoignages permettent de dire que chez la majorité des conducteurs de voitures qui ne sont pas en possession de toutes leurs facultés, le taux d'accident est trois fois plus élevé à ce niveau, et pour ce qui est d'un accident grave ou fatal, le taux est deux fois plus élevé. Le parlement doit nécessairement adopter des lois plus sévères au sujet de la conduite d'une voiture en état d'ivresse. Le délit c'est décidément de conduire une voiture lorsqu'on est en état d'ivresse.

Je comprends ce qui se passe ici, mais je demanderais au député d'accepter ce que je demande car on connaît le massacre sur les routes et c'est une situation assez grave pour insister pour que les peines soient égales dans chacun de ces délits.

M. Alexander: La seule chose qui m'inquiète ici, c'est qu'il y a au moins trois délits différents, et que l'accusé n'est pas seulement jugé coupable en vertu de l'article 223. Il peut également être jugé coupable en vertu de

[Text]

found guilty under Section 222. In other words, what I am worried about is that the accused will be faced with two charges when, in effect, all we are trying to do is to point out to the general public the gravity of the situation when it comes to drinking and driving.

But, at the same time, it could be quite onerous on an accused, who can be faced with a double penalty. If you catch him under Section 223 there is nothing to prevent the Crown from also laying a charge under Sections 222 and 224. Why the triple jeopardy? I am on all fours with you, and I think this is the type of legislation we need, but at the same time I am still concerned about those who have certain rights. Here we find that he can be charged under Section 222 and can be found guilty; he can be charged under Section 223 and be found guilty; and charged under Section 224 and be found guilty. He is faced with three penalties. Have we considered this, or are we assuming that the Crown, with its usual charitable gesture, will only...

Mr. Turner (Ottawa-Carleton): He can never be faced with three penalties.

Mr. Alexander: Well, let us say that he can be faced with two.

Mr. Turner (Ottawa-Carleton): He can never be faced with three, because if he refuses to take the test you do not know what the statutory level is. So we are talking about two charges.

Mr. Alexander: Two charges.

Mr. Turner (Ottawa-Carleton): He may well be guilty of two offences, and there can be different factual situations. Let us talk about the statutory blood alcohol level and the impaired driving. Those are two offences. It may be that for a time, in certain parts of the country, there will not be any breathalyzer machines, or it may be that you will have a factual situation where the blood alcohol content is less than .08 per cent but the driver is, in fact, impaired. So there are two charges. It might well be possible that if the blood content is over .08 he could be charged both with impaired driving and having a statutory...

Mr. Alexander: That is the part that I am getting at.

Mr. Turner (Ottawa-Carleton): That is right.

The Chairman: Order, please. A supplementary, from Mr. Deakon.

Mr. Deakon: If he does not take the test that he is compelled to take, can the evidence

[Interpretation]

l'article 222. L'accusé pourra faire face à deux chefs d'accusation, ce qui m'inquiète, lorsqu'il ne faudrait que souligner à l'attention du public en général la gravité de la situation. Toutefois il est parfois très coûteux pour un accusé de faire face à un double chef d'accusation. Si on l'arrête ou on l'appréhende en vertu de l'article 222, rien n'empêche la couronne de porter une accusation en vertu de l'article 223, et 224. Je voudrais savoir pourquoi on formule une triple accusation; lorsqu'une personne peut être accusée en vertu de l'article 222 et est jugée coupable elle peut être accusée en vertu de l'article 223 et jugée coupable, et aussi jugée coupable également en vertu de l'article 224.

M. Turner: Il ne peut jamais faire face à trois accusations.

M. Alexander: Disons qu'il fait face à deux accusations.

M. Turner (Ottawa-Carleton): Il ne pourra faire face à trois accusations. Il ne s'agit que de deux chefs d'accusation.

M. Alexander: Deux chefs.

M. Turner (Ottawa-Carleton): Même sous deux chefs d'accusation, la situation peut être différente. Parlons plutôt de conduite en état d'ivresse et du contenu d'alcool. Il se peut que dans certaines parties du pays il n'y ait pas d'ivressomètres. Il se peut également qu'il y aura des cas où la proportion d'alcool n'était pas aussi élevée mais que la personne était en état d'ivresse. Et si la proportion d'alcool est plus élevée que .08 p. 100 la personne aura à répondre à deux chefs d'accusation.

M. Alexander: C'est là où je veux en venir.

M. Turner: C'est ça.

Le président: A l'ordre, s'il vous plaît. Question supplémentaire. M. Deakon.

M. Deakon: S'il ne veut pas accepter de se soumettre au test, ceci peut lui faire tort,

[Texte]

of his refusal be used in a position adverse to him when he is faced with the ability-impaired charge?

Mr. Alexander: I am wondering how far we are going to go against the accused.

Mr. Turner (Ottawa-Carleton): As you know, there is nothing unique, Mr. Alexander, in alternative charges, or cumulative charges, being laid relative to the same series of facts.

Mr. Alexander: It is not usually spelled out so well as it is right here. It is spelled out admirably here that you can be faced with two charges, both surrounded by the same sorts of circumstances, in that they both deal with driving while drinking. If a man is not careful he may be in the hole for—I do not know—\$1,000, or \$1,500, but all you are concerned about, Mr. Turner, is to show one the error of one's ways in drinking and driving. I am a little concerned about the man who may have to face two charges, with a fine which can be up to \$1,000, plus his legal fees.

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Mr. Turner (Ottawa-Carleton): I am concerned about the people whose lives are endangered by those who subject themselves to a potential charge such as this.

Mr. Alexander: I am, too.

Mr. Murphy: Mr. Chairman, the Minister has read from a portion of the submission I made to him during the course of these meetings. He stopped at a point after he read the following:

Since the proposed law will obviously apply to *all* drivers in Canada, it will be manifestly unjust when applied to those people whose tolerance to alcohol is greater (for one reason or another) than that of the majority of drivers.

It went on to say that,

It is for this very reason that the judiciary has consistently refused to convict in prosecutions...

Under the present impaired driving section

...where the only evidence adduced was that of chemical tests, whether of breath, blood, or urine.

The Minister went on to point out, in respect of .08, that the works of Ward Smith and the film put together by Ward Smith and I believe Doug Lucas of the Ontario Forensic Clinic have convinced him fairly conclusively. I would like to point out in reply the case of *Regina vs. Lord*, which involved Air Canada

[Interprétation]

n'est-ce pas si on l'accuse d'avoir conduit en état d'ivresse?

M. Alexander: Jusqu'où sommes-nous prêts à aller contre l'accusé.

M. Turner (Ottawa-Carleton): Il n'y a rien de spécial, ici, M. Alexander à ce qu'un deuxième chef d'accusation soit porté pour le même fait.

M. Alexander: De façon habituelle ce n'est pas expliqué aussi clairement que dans ce cas. On voit très bien ici qu'on peut faire face à deux chefs d'accusation, et qu'il s'agit des mêmes circonstances. L'accusé peut faire face à une amende de \$1000.—ou \$1500. Vous dites vous inquiéter de l'exemple à donner, moi je m'inquiète qu'un homme ait à faire face à deux chefs d'accusation très coûteux.

M. Turner (Ottawa-Carleton): Moi, je m'inquiète du sort de ceux qui conduisent en état d'ivresse et je m'inquiète également de ceux qui peuvent en être victimes.

M. Alexander: Moi aussi.

M. Murphy: Monsieur le président, le ministre a lu un extrait de la représentation que je lui ai faite au cours de ces réunions. Il est arrêté au point suivant: «Comme la loi s'appliquerait à tous les conducteurs au Canada, elle sera injuste vis-à-vis les personnes qui ont une plus grande tolérance à l'alcool. C'est la raison pour laquelle on a toujours refusé jusqu'ici de condamner quelqu'un à la suite d'analyses chimiques.»

Dans l'un des cas, le ministre a été jusqu'à souligner, au sujet de .08, que les travaux de Ward Smith et le film de Ward Smith et de Doug Lucas je crois, de l'*Ontario Forensic Clinic* l'ont convaincu. Je tiens à mentionner en réponse à cela le cas de *Regina vs Lord* impliquant Air Canada et quelques oiseaux

[Text]

and some birds, where Mr. Justice Stewart drew a sort of syllogism. Here we have racing drivers and I would like to draw a similar type of syllogism. Some men are racing drivers. All racing drivers may be impaired when they have .08 parts per thousand in their blood. You now are drawing the conclusion that because of that all men are impaired because they have .08 parts per thousand in their blood.

Mr. Turner (Ottawa-Carleton): No, I am not. I am just saying even the best drivers were impaired, therefore those of us who are not as good drivers are likely going to be impaired—even the men who have the most sensitive control of an automobile.

Mr. Murphy: I might again take issue with the Minister on that, Mr. Chairman, because whether or not a person is a good driver I do not think really has all that much bearing on how quickly or how slowly he becomes impaired or what tolerance he may have to alcohol. If a driver happened to weigh 250 lbs or 225 lbs and was very used to drinking he might react very differently from a 160 lb. driver who has never had a drink in his life before. The degrees of impairment are considerable, depending on many factors—not the skill and driving but on the size of the individual, his background, even his race in some cases, as the Minister knows. While I will agree that the driving ability of a person with .08, or all people with .08, may well be affected to some degree, I cannot agree, nor do I think the Minister can put forward any expert who will agree, that all people are affected to the same degree or affected to a degree that we understand to be impaired driving from the way that it has been interpreted by the courts since that section has been in force.

There were other hearings. I understand several witnesses were heard before an earlier justice committee, among them a Doctor Rabinowitch, who I am sure would take great issue with some of the findings of Dr. Smith. The Chairman tells me that the Minutes of those proceedings are available for study by Committee members. The same Mr. Lucas who collaborated with Dr. Ward Smith in the production of this film brought the film to Sault Ste. Marie, together with breathalizers and the rest of it, and put on quite a demonstration for the law society up there. During the course of a dinner we all kept track of how much we had to drink, wrote it down faithfully and after the presentation was over we all approached the breathalizer. I myself blew into the machine without gimmickry,

[Interpretation]

où le juge Stewart a établi un syllogisme. Le cas présent traite de chauffeurs de course et j'aimerais établir le même genre de syllogisme. Tous les chauffeurs d'auto de course sont peut-être en état d'ivresse et lorsqu'ils ont .08 p. 100 d'alcool dans le sang, vous en déduisez maintenant que tous les hommes sont en état d'ivresse parce qu'ils ont .08 p. 100 dans le sang.

M. Turner (Ottawa-Carleton): Non. J'ai juste dit que même les meilleurs conducteurs voient leurs facultés atteintes par cela, donc ceux d'entre nous qui ne sont pas d'aussi bons chauffeurs peuvent être en état d'ivresse, même ceux qui ont un très bon contrôle de leur voiture.

M. Murphy: Je ne suis pas d'accord avec le ministre, monsieur le président, car la question de déterminer si une personne est bon chauffeur ou non n'influence vraiment pas la rapidité avec laquelle il devient ivre ou sa tolérance à l'alcool. Si la personne pesait 225, 250 livres et avait l'habitude de boire, elle réagirait de façon bien différente de celle d'un chauffeur de 160 livres qui n'a jamais bu de sa vie. Les degrés d'affaiblissement sont considérables, selon une foule de facteurs, non l'habileté et la conduite, mais la taille d'individu, son milieu et même sa race en certains cas, comme le sait le ministre. Quoique j'admets que la capacité de conduire d'une personne qui a .08 est affectée d'une façon ou d'une autre, je ne puis admettre et aucun expert ne va admettre que tout le monde est affecté de la même manière ou au degré tel qu'il a été interprété par les cours de justice depuis que l'article est en vigueur.

Il y a eu d'autres audiences. Un comité de la Justice précédent a entendu quelques témoins, dont le Dr Rabinowitch qui ne seraient pas d'accord, j'en suis sûr, avec les découvertes du Docteur Smith. Le président me dit que les membres du Comité peuvent étudier ces compte-rendus. Monsieur Lucas qui a collaboré avec le Docteur Ward Smith dans la préparation de ce film, a fait une démonstration à l'intention de la Société de droit de Sault-Sainte-Marie, à l'aide du film et d'ivressomètres. Durant le dîner, nous avons tenu compte du nombre de verres de boisson que nous avons pris et à la fin du repas, nous nous sommes approchés de l'éthylomètre. J'ai soufflé dans l'appareil à cinq reprises pendant une période de 35 minutes, d'une façon parfaitement naturelle, sans qu'il

[Texte]

perfectly naturally, five different times during the course of 35 minutes. The machine was being operated by the police officer of Sault Ste. Marie who happens to run these things and who had been trained by Dr. Lucas. They got five completely different readings. They

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varied from below .05 to over 2 parts per thousand in a matter of 35 minutes.

Mr. Turner: All I can say is that you were doing some fast drinking.

Mr. Murphy: No; there was no drinking in between—absolutely none. As a matter of fact, just on a point of interest, this test was written down and I carried it around with me for a year afterwards and there was never a breathalyzer test evidence offered against me in magistrates court because they knew what I had in my pocket. But that is a side point.

Mr. Wolliams: Can I have one of those things.

Mr. Murphy: The other thing that has obviously impressed the Minister are the results of the Grand Rapids test. And I agree with him—there is a need to make this an offence to stop drinking and driving, but I do not think that until we can be absolutely certain that everybody who has .08 is impaired to the point that we understand impaired to be that a man who has not shown any evidence of impairment and yet has that blood alcohol content should be liable to an indictable offence and on a second conviction imprisoned to a minimum of 14 days.

This is the part of the section that bothers me. I agree that we have to stop the carnage but I think we can accomplish that by making Sections 223 and 224 offences, but summary conviction offences. The government has frequently and properly said on a number of occasions that one of its aims is to assure and secure individual rights. Surely the observance of this lofty ideal should be sought even more zealously when we are dealing with the enactment of a penal statute which brands the offender against this provision as a criminal and renders him liable to be sentenced to jail.

For those reasons, Mr. Minister, I am proposing an amendment which reads as follows: that Bill C-150, Clause 16 be amended as follows:

(a) by striking lines 15 to 28 inclusive on page 36 and substituting therefor: "an

[Interprétation]

y ait truquage. Un agent de police de Sault-Sainte-Marie, formé par le docteur Lucas s'occupait du fonctionnement de l'appareil. Ils ont obtenu cinq relevés complètement différents. Ils ont varié entre moins de .05 à plus de 2 parties par mille en-dedans de 35

minutes.

M. Turner (Ottawa-Carleton): Tout ce que je peux dire, c'est que vous avez bu rapidement.

M. Murphy: Je n'ai absolument pas bu dans l'intervalle. De fait pour votre information, on a noté ce test et je l'ai conservé pendant une année et personne n'a osé me présenter comme évidence un test d'ivressomètre à la Cour des magistrats car on savait ce que j'avais dans ma poche. Mais c'est à côté de la question.

M. Wooliams: Est-ce que je peux en avoir un?

M. Murphy: Une autre chose qui a certainement impressionné le ministre est le résultat des tests de Grand Rapids. Je suis d'accord avec lui qu'il est nécessaire d'en faire une infraction pour arrêter la conduite en état d'ivresse, mais je ne crois pas que tant que nous serons absolument certains que toute personne qui a .08 p. 100 d'alcool dans son sang est intoxiquée au point tel que nous comprenons l'intoxication, qu'un homme qui ne montre pas d'affaiblissement et cependant dont le contenu d'alcool dans le sang le rend passible d'un acte criminel et une deuxième condamnation à la prison pour un minimum de 14 jours.

C'est l'aspect de cet article qui m'inquiète. Je suis d'accord qu'il faut arrêter ce massacre, mais je pense que nous pouvons le faire en faisant les articles 223 et 224 des délits sommaires. Le gouvernement a dit à plusieurs reprises que l'un de ses objectifs est d'assurer le respect des droits d'un individu. Je crois qu'il faudrait poursuivre cet idéal élevé avec encore plus de zèle lorsqu'on traite de l'application d'une loi pénale qui qualifie de criminel celui qui transgresse cette disposition et le rend passible d'emprisonnement.

Je propose donc, monsieur le ministre, l'amendement suivant: modifier le Bill C-150 à l'article 16 comme suit:

a) en éliminant les lignes 15 à 20 inclusivement et en y substituant et je cite: «un

[Text]

offence punishable on summary conviction"

(b) by striking out lines 36 to 42 inclusive on page 36 and lines 1 to 6 inclusive on page 37 and substituting therefore: "an offence punishable on summary conviction"

Mr. Deakon may have something to say about that but I might say in passing that I think that this is the recommendation of the last Justice and Legal Affairs Committee. I also think that if this is tried and if it does not work, then the Department can take further steps to tighten the law and make it more serious in the future. But to start in the reverse manner and then to hope to go backwards is an impossible exercise, in my opinion. If that is the case we should start by making the penalty death or lashes or something of that nature.

The Chairman: May I have the amendment.

Mr. Alexander: Does that amendment affect all sections, Mr. Chairman.

The Chairman: Sections 223 and 224. Gentlemen, we have the amendment before us, and it is a most important one. I know that Mr. Mather has indicated that he wishes to ask some questions. Do you want to speak to this amendment, Mr. Mather?

Mr. Mather: Yes, if I might, Mr. Chairman.

These two points were discussed in the Justice and Legal Affairs Committee of 1966. I am referring to the point regarding the setting of a statutory limit of blood alcohol content at .08 per cent, and the other point in regard to making it an offence not to take the breathalyzer test. The Committee considered both these points at considerable length and the unanimous finding of the Committee at that time, to put it briefly, was that in regard to the wisdom or rightness of setting a limit of blood alcohol content of .08 per cent we were doing very much that we have already

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done in regard to setting a speed limit on the highway. We are not saying that everybody or anybody is impaired necessarily at .08 per cent but we say, just as we have said in law, that a certain speed limit, regardless of whether a driver is a better driver or a poorer driver than another, is the standard one.

The finding of the Committee at that time was the same in regard to the level of blood alcohol content. We came to that conclusion after many meetings, after hearing a good many expert witnesses and hearing such

[Interpretation]

délit punissable à la suite d'une conviction sommaire;"

b) en éliminant les lignes 36 à 42 et les lignes 1 à 7 à la page 37 et en y substituant: un délit punissable à la suite d'une conviction ou d'une condamnation sommaire.

M. Deakon peut avoir quelque chose à dire, mais je ferais remarquer que je crois que c'est la recommandation du dernier comité de la Justice et des questions légales. Si on en fait l'essai, et que ça ne réussisse pas, à ce moment-là, le ministère peut renforcer la loi, rendre le délit plus grave à l'avenir. Mais procéder de façon inverse, c'est-à-dire rendre la loi moins sévère est impossible, à mon avis. Alors il faudrait que la punition soit le fouet ou la peine de mort, ou autres choses du genre.

Le président: Puis-je avoir l'amendement?

M. Alexander: Est-ce un amendement qui affecte tous les articles, monsieur le président.

Le président: Les articles 223 et 224. Messieurs, nous sommes saisis d'un amendement qui est très important. M. Mather a dit qu'il voulait poser des questions. Voulez-vous parler de cet amendement, monsieur Mather?

M. Mather: Oui, monsieur le président.

Ces deux questions ont été traitées par le comité de la Justice et des questions légales de 1966. Je parle du point qui veut établir à .08 p. 100 la limite statutaire au contenu d'alcool dans le sang, et l'autre qui en fait une offense de ne pas subir le test d'ivressomètre. Le Comité a étudié longuement ces deux points de vue et il a constaté, à l'unanimité, que pour ce qui est de la sagesse ou de la justesse d'établir une limite au contenu d'alcool, nous faisons à peu près la même chose que de fixer une limite de vitesse sur la route. Nous ne disons pas que tout le monde

va être ivre à un niveau de .08 p. 100, mais nous disons que, comme dans la loi, une certaine limite de vitesse, peu importe l'habileté du chauffeur, est la norme.

Les constatations du Comité à ce moment-là ont été les mêmes pour le niveau d'alcool dans le sang. Nous en sommes venus à cette conclusion après avoir tenu beaucoup de réunions et après avoir entendu beaucoup d'ex-

[Texte]

bodies as the Canadian Bar Association, the Canadian Safety Council and the Canadian Medical Association. We were agreed that the breathalyzer was an accurate means of finding the blood alcohol level and we were agreed that the blood alcohol level must be set in a standard way—that we could not have different varieties of tests for different people but we must treat it as we are treating speed. Alcohol and speed are ingredients of traffic accidents. This was our view at that time on that point.

In regard to the discussion relative to refusals to take a test, I want to say again, Mr. Chairman, that the 1966 Committee, after hearing much testimony on this too, came to the opinion that this was the very heart of the proposed act, because we have had in Ontario and other places the breathalyzer in effect, in force, for many years. But it has been on a nonmandatory basis and the result has been in Ontario that many sophisticated drivers knowing that there is no law which would require them to submit to the test, an impartial test, decline to do so, and that sophisticated driver core of Ontario drinking drivers accounted for, at the time we discussed this in 1966, about 20 per cent of the people involved in fatal accidents.

These people know that they do not have to take the test. If they knew they had to take the test it would be a different situation. And in line with that we thought, and I still think, that the penalty for refusal to take the test should be just as strong as in any other section of the proposed act because unless that particular point is enforced, that is cutting down, cracking down on drinking drivers and trying to get the public in a position of freedom from drinking drivers rather than of maintaining the freedom of drinking drivers, the whole effort will fall to the ground. So I speak against the amendment proposed by Mr. Murphy, and I would urge other members to consider the thoughts that we had in the previous Committee where we dealt at great length with the same point.

Mr. Hogarth: On a point of order the only thing this amendment does, as I understand it, is that under proposed Section 223(2) it makes it merely punishable on summary conviction. It provides exactly the same penalties as it would if it remained on indictment. That is the only thing it does. It does not change the legislation from the point of view of compulsory tests or anything of that nature.

Mr. Chairman, I would like to speak on this again when my turn comes up.

[Interprétation]

perts, après avoir entendu des organismes comme l'Association du barreau canadien, le Conseil canadien de la sécurité, l'Association médicale du Canada. Nous avons convenu que l'ivressomètre était un moyen précis de déterminer le contenu d'alcool et que le contenu d'alcool doit être fixé à un certain niveau afin de ne pas avoir une diversité de tests pour différentes personnes, mais il faut traiter ce problème comme le problème de la vitesse. L'alcool et la vitesse sont des causes d'accidents. C'était notre opinion d'alors à ce sujet.

Au sujet de la discussion relative au refus de se soumettre au test, je veux répéter, monsieur le président, que le Comité de 1966, après avoir entendu les questions, en est arrivé à la conclusion que c'était le cœur même de la loi. En Ontario, l'ivressomètre est employé depuis plusieurs années mais à titre non-obligatoire. C'est pourquoi beaucoup de conducteurs, sachant qu'ils ne sont pas obligés de se soumettre au test, refusent de le faire et ce groupe de personnes prétentieuses qui boivent avant de prendre le volant représentaient, en 1966, environ 20 p. 100 des personnes en cause dans les accidents fatals.

Ils savent toutefois qu'ils n'ont pas à se soumettre au test, mais s'ils savaient qu'ils sont obligés de subir le test, la situation serait différente. Je crois toujours que la peine infligée à ceux qui refusent de se soumettre au test devrait être aussi considérable qu'en vertu des autres dispositions de la loi, car à moins d'appliquer sévèrement la loi à l'égard de ceux qui conduisent en état d'ivresse, et ainsi protéger le public, au lieu de protéger la liberté des chauffeurs ivres, tout est perdu. C'est la raison pour laquelle je ne suis pas d'accord avec l'amendement de M. Murphy, je voudrais qu'on se souvienne de ce qui a été dit au comité précédent.

M. Hogarth: J'invoque le règlement, monsieur le président. L'amendement ne fait que, si je comprends bien, rendre ces délits punissables à la suite d'une déclaration sommaire de culpabilité aux termes du nouvel article 223 (2) du Code. On prévoit exactement les mêmes peines que s'il s'agissait d'une incrimination. C'est juste. Il ne modifie pas la mesure au point de rendre le test obligatoire ou quelque chose de ce genre.

Monsieur le président, je voudrais revenir à ce sujet lorsque ce sera mon tour.

[Text]

The Chairman: Yes. Mr. MacEwan, then Mr. Deakon.

Mr. MacEwan: Mr. Chairman, I said all along that I agree with everything Mr. Mather said except paragraph 3 on page 4 of the sixth Committee report dated February 4, 1967, which was given to the House at that time. It recommends

3. That the offences recommended above that is on the blood alcohol level or on the breathalyzer level and on the mandatory part of it.

3. That the offences recommended above be punishable on summary conviction.

I agree with what Mr. Murphy has said on this. I think that is a sufficient deterrent. I did have some question in my own mind while speaking in the House and even up to a few days ago although I did go along with this Committee report about the mandatory test. I will agree with that but I think as set out in the amendment, that these offences should be punishable only on summary conviction and not indictment, they would be sufficient to carry out the objective which the Minister and the government have in mind under this Bill.

The Chairman: Thank you, Mr. MacEwan. Mr. Deakon.

Mr. Deakon: Thank you, Mr. Chairman. I am sure that the honourable members who have spoken prior to me have in a most eloquent way described the same sentiments which I have. And just to comment slightly on what Mr. Mather has mentioned, I am sure we also all agree with what he has said. This amendment, as mentioned by Mr. MacEwan, is strictly regarding the summary conviction situation and I am sure he would not want—at least I feel he would not want—a person who refuses to take a test to become a criminal and to have his fingerprints and photograph taken, and so on. And with reference to his comments regarding speed, we have sets of speed limits all over the place, but one must remember also that there are different penalties for different rates of speed. And it is precisely why this situation is being brought up at this time. And I would support the amendment.

The Chairman: Mr. Chappell.

Mr. Chappell: Mr. Chairman, basically I agree with the philosophy, and although I can see much merit in the amendment, I would go about it in another way. I think there is conflict in the reasoning in the three sections,

[Interpretation]

Le président: M. MacEwan puis M. Deakon.

M. MacEwan: J'ai toujours dit, monsieur le président, que je suis d'accord avec tout ce que dit M. Mather, sauf à la ligne 3 de la page 4, du rapport du sixième comité en date du 4 février 1967 présenté à la Chambre. On recommande «que les délits mentionnés plus haut,» c'est-à-dire que le taux d'alcool dans le sang ou relevé par l'ivressomètre, «que les délits mentionnés plus haut soient punis sur déclaration sommaire de culpabilité.» Je suis d'accord avec ce que dit M. Murphy à ce sujet, je pense que c'est une force de dissuasion insuffisante. Lorsque je parlais à la Chambre, je songeais à poser des questions, et il y a quelques jours encore, j'acceptais le rapport de ce comité au sujet du test obligatoire. Je suis d'accord, mais je crois que les délits tels qu'exposés dans l'amendement ne feraient l'objet que de déclarations sommaires de culpabilité et non pas d'incrimination, et ce ne serait pas suffisant pour réaliser l'objet visé par le ministre et le gouvernement.

Le président: Merci. M. Deakon?

M. Deakon: Je sais que les députés qui ont pris la parole avant moi ont pu s'exprimer de façon très éloquente, mais cet amendement, comme l'a dit M. MacEwan, ne s'applique qu'aux situations de déclarations sommaires de culpabilité et je suis certain, du moins je le crois, qu'il ne voudrait pas qu'une personne qui refuse de se soumettre au test devienne un criminel et doive se soumettre au même traitement qu'un criminel. Quant à ce qu'il a dit au sujet de la vitesse, il y a des limites partout, mais il ne faut pas oublier qu'il y a des peines différentes pour différentes vitesses. Et c'est précisément pourquoi on en parle. J'appuie donc l'amendement.

Le président: M. Chappell.

M. Chappell: Monsieur le président, je suis fondamentalement d'accord avec la philosophie exposée et bien que je concède les mérites de cet amendement, je vais exposer mon point de vue autrement. Je crois qu'il y a

[Texte]

but above all I am concerned with the evidentiary aspects. I think they are faulty. Under proposed Section 222, as we all know, if you are convicted of ability impaired, there will be a penalty for the first offence of \$500 or three months in jail. I am satisfied that you could not be convicted as a result of a blood, urine or breath test alone. There would have to be observations or clinical evidence to support those chemical tests. But it can be refuted by witnesses, both as to the amount consumed and the effect on him. In other words, the accused can succeed under Section 222 if the magistrate believes the evidence. No matter what the machine or the chemical test said, he can succeed.

Under Section 224, if the breathalyzer says he has .08, we start off with the same penalty, but as I read the sections, no evidence is required as to observation no matter what he says as to his condition. In fact I think that what his condition was is irrelevant. So also is the amount he consumed I believe to be irrelevant. It is what this test says that counts. So he is in this position, I think—and this is where there is conflict in the reasoning. Although he is charged twice under Sections 222 and 224, although he may discredit the evidence under Section 222 and the breathalyzer test evidence has been given at .08, he may do so completely and if the magistrate believes it he gets off under Section 222. But under Section 224 he is convicted. The magistrate is stuck with this evidence even though, when he was trying him under Section 222, he thought he should free him, because he did not accept that evidence.

Now supposing one of us here, having discussed this, is conscious of this, that you could get yourself into real trouble if you took that test knowing that you had only had one drink, particularly if you knew there was a sloppy operator, and refused to take the test, under proposed Section 224A, subsection (3) "the court may draw an inference therefrom adverse to the accused" so he is convicted under Section 222 again. As I said at the beginning, I do not quarrel with the basic philosophy but I am concerned lest in our anxiety we net some innocent people as well.

And as Mr. Alexander pointed out, even though we want to clean up the highways—no one quarrels with that—these people do have some rights. Years ago everyone thought the urine and blood tests pretty foolproof but now many are having second thoughts. It may

[Interprétation]

conflit dans le raisonnement des trois articles, mais je songe surtout aux aspects des preuves à établir. Je crois qu'elles sont erronées. Je sais qu'en vertu de l'article 222, si on vous trouve coupable de conduite en état d'ivresse, on peut passer trois mois en prison ou payer \$500 pour la première infraction. Je sais qu'on ne peut pas condamner seulement à la suite d'une analyse du sang, de l'urine ou de l'haleine. Ces épreuves chimiques doivent être appuyées par des observations ou des preuves cliniques mais elles peuvent être réfutées par les témoins tant qu'au montant d'alcool consommé et les effets sur lui. En d'autres mots, si le magistrat accepte les preuves, l'accusé peut s'en sortir en vertu de l'article 222, quoiqu'en dise l'appareil ou les résultats de l'analyse chimique.

En vertu de l'article 224, si l'ivressomètre établit que la personne a une teneur de .08 p. 100 d'alcool, la peine est la même au départ, mais de la façon dont je comprends ces articles, il n'est pas nécessaire que l'observation soit appuyée de preuves quoiqu'en dise l'accusé. Sa condition n'a rien à voir avec la question de même que la somme d'alcool qu'il a absorbé. C'est le résultat du test qui compte. Il se trouve donc dans cette situation je crois, et c'est pourquoi il y a un conflit dans le raisonnement. Bien qu'il soit accusé deux fois aux termes des articles 222 et 224, il peut rejeter les preuves relatives à l'article 222 et les résultats de l'ivressomètre qui sont de .08, et convaincre le juge de sorte qu'il s'en tire vis-à-vis de l'article 222. Il peut cependant être condamné en vertu de l'article 224. Le magistrat doit s'en tenir à ces preuves même si en vertu de l'article 222 il a cru devoir le libérer parce qu'il n'acceptait pas ces preuves.

Supposons qu'un d'entre nous, par exemple, qui après en avoir discuté, est au courant et qu'il sait qu'il peut s'exposer à des ennuis graves s'il se soumet à ce test, même s'il n'a pris qu'un verre, surtout s'il sait que l'analyste n'est pas soigneux, et refuse de se soumettre, en vertu de l'article 224A, paragraphe (3) «le tribunal peut en tirer une conclusion défavorable à l'accusé», de sorte qu'il est condamné aux termes de l'article 222 de nouveau. Et comme je l'ai dit au début, je ne m'oppose pas à la philosophie de base, mais j'ai peur que dans notre désir de bien faire, nous fassions du tort à des personnes innocentes.

Comme l'a souligné M. Alexander, ces gens ne veulent que nettoyer les routes et c'est très bien, mais les gens en cause ont des droits. Il y a des années, tout le monde pensait que les analyses de l'urine et du sang étaient infaillibles, mais on commence à en douter. Il se

[Text]

very well be that science in future will throw doubt on the breathalyzer test—not in a general way but that it missed on certain people. So, I feel it is sufficiently important to protect those who may very well escape under better testing in future and those who might be convicted under Section 224, where the magistrate really would like not to convict, that there must be a back-up or second test. I think it is just too serious to hand out jail terms dependent on a single operation which may slip.

So in conclusion, although I do not disagree with the philosophy, I think we must be more sophisticated in the evidence to protect against some innocent people being convicted when they ought not to be. And I might just say, Mr. Chairman, I think it is too complicated for me to draft an amendment on this without several days' consideration and discussion. But I make my position clear that I may very well support it today but launch a motion later after I have given it some further thought. I did not want to appear to be going back and forth.

The Chairman: Thank you, Mr. Chappell. Mr. Gervais.

Mr. Gervais: Mr. Chairman, if I understand the motive behind this amendment, Mr. Murphy's intention is to alleviate the penalty. I am thinking in terms of the legislation existing in my province where, if you are convicted a first time, automatically the Registrar of Motor Vehicles suspends or revokes your licence for six months. I think this is a substantial deterrent. Why threaten a fellow with imprisonment if he refuses to submit to this test if it is his second offence, because then the Registrar of Motor Vehicles will revoke his licence for possibly a year. I do not know what legislation exists in other provinces, but I still think that this is a heavy deterrent.

The Chairman: Thank you Mr. Gervais. Mr. MacGuigan.

Mr. MacGuigan: Mr. Chairman, I am not able to support Mr. Murphy's motion, for two reasons. First of all I believe that the danger from drinking driving is a danger of such magnitude in our society that it is appropriate that we should have a very serious penalty for it, a penalty which is much more serious than we have seen up to now, and one which we can at least expect will begin to lessen and ultimately to reduce, we hope, almost to non-existence this menace in our society.

Secondly, not only is it appropriate in my opinion to have such a penalty but it is also I

[Interpretation]

peut fort bien que dans l'avenir la science mette en doute le test de l'ivressomètre. Je crois qu'il est suffisamment important pour protéger ceux qui seront jugés innocents si les tests sont améliorés dans l'avenir et ceux qui seraient condamnés aux termes de l'article 224(1) pour lequel le magistrat n'aime pas les condamner, qu'il y ait une seconde analyse à l'appui. Je crois que c'est trop grave d'envoyer quelqu'un en prison à la suite d'un seul test qui pourrait être erroné.

En conclusion, donc, même si je ne suis pas en désaccord avec cette philosophie, je crois qu'il faut tenter de perfectionner les preuves afin de protéger contre des accusations sommaires de culpabilité les personnes innocentes. Je crois que ce serait trop compliqué pour moi de rédiger un amendement à ce sujet sans avoir plusieurs jours pour étudier et discuter de la question. Je dis donc clairement que je vais peut-être appuyer l'amendement aujourd'hui quitte à proposer une motion plus tard lorsque j'aurai eu le temps d'y penser. Mais je ne voudrais pas toutefois qu'on croit que je change de côté.

Le président: Merci. Monsieur Gervais.

M. Gervais: Je comprends les raisons qui ont motivé cet amendement. M. Murphy a l'intention d'alléger un peu les sanctions. Je songe à la législation dans ma province, où si vous êtes trouvés coupables d'une première infraction, le registraire des véhicules automobiles révoque votre permis pour six mois. Il me semble qu'il s'agit là d'un moyen de dissuasion estimable. Pourquoi menacer un chauffeur d'emprisonnement s'il refuse de se soumettre au test; dans le cas d'une deuxième infraction, le registraire peut révoquer son permis de conduire pour un an. Je ne sais pas quelles sont les sanctions dans les autres provinces, mais je pense qu'on a là un moyen de dissuasion éloquent.

Le président: Merci, monsieur Gergais. Monsieur MacGuigan.

M. MacGuigan: Monsieur le président, je ne peux pas appuyer la motion de M. Murphy, et ce pour deux raisons. D'abord, il me semble que le danger que représente l'ivresse au volant est tellement énorme dans notre société qu'il nous faut prévoir des sanctions très sévères, beaucoup plus qu'elles ne le sont maintenant, qui nous permettraient d'espérer que cette menace soit atténuée, sinon enrayée, de notre vie sociale.

Deuxièmement, il est juste qu'il y ait de telles sanctions et je pense même qu'elles

[Texte]

think necessary, and here I think is where I would have the sharpest disagreement with Mr. Murphy. I understand his position to be that we should start with an offence which is punishable only on summary conviction, with a lesser penalty, and that if we find it necessary through social experience, he would then be willing to accept a heavier penalty. I take the view that there is such tolerance for drinking while driving in the middle-class morality, and in fact probably all popular morality in Canada, that we have to start with a sharp jolt. This is not something which is going to be effective unless we start with a bang, and I think the bang is the indictable offence aspect, and I am therefore prepared to support that.

The Chairman: Mr. Hogarth.

Mr. Hogarth: Mr. Chairman, I think I agree certainly with what Mr. MacGuigan has said. But I think we have to bear in mind, if you look at the history of our drunken driving laws, that we started with a bang and it did not work. Prior to, I think it was 1951, the only offence was driving while you were intoxicated. There was a mandatory seven days imprisonment and the result of that was that because so many reputable people were coming before the courts, there was a system of pious perjury built up and nobody ever appeared to be drunk.

So we had to do something, and what did we do? We passed another law which is what we now refer to as impaired driving, and it is extremely interesting to me to hear all this talk about tough penalties and how really tough we have to get, when in our impaired

• 1705

driving section we do not even provide the same maximum of imprisonment that you get on an ordinary summary conviction offence, albeit there is a minimum fine.

Whether or not we are progressing now is a very good question. In any event I would just like to draw to your attention that in British Columbia, I am informed, and quite reliably, that there is not any real intention of the authorities to enforce these new sections if they pass. We provided there a couple of years ago what we call curb-side justice, and from all assessments of the program to date it seems to be extremely effective in accomplishing what we are here setting out to accomplish, and that is to remove people who drink from the highways. We passed Section 203 of the Motor Vehicle Transport Act, and that provides that everyone who has a .08 reading has his licence subject to suspension. And I might say, Mr. Chairman, that after a

[Interprétation]

s'imposent. Et voici où je suis en parfait désaccord avec M. Murphy. Si je comprends bien, il voudrait qu'au départ, pareille infraction comporte une sanction mineure, uniquement sur déclaration sommaire de culpabilité, et qu'il ne soit prévu des sanctions plus sévères que si l'expérience ultérieure en démontre la nécessité. Il me semble que notre moralité bourgeoise, même notre mentalité populaire au Canada, tolère l'ivresse au volant; alors il faut réveiller les gens. On n'y parviendra pas à moins de les secouer vigoureusement, en faisant de l'ivresse un délit criminel. Voilà ce que je suis prêt à appuyer.

Le président: M. Hogarth.

M. Hogarth: Monsieur le président, je suis d'accord avec ce que vient de dire M. MacGuigan. Il nous faut pourtant reconnaître, tel que le font voir nos lois antérieures sur l'ivresse au volant, que les sanctions étaient jadis sévères, mais que cela n'a pas marché. Avant 1951, je pense, conduire une voiture en état d'ébriété entraînait obligatoirement une peine d'emprisonnement de sept jours. Or, il y a eu tellement de gens bien connus qui, devant les tribunaux, niaient pieusement leur culpabilité, ce qu'on acceptait volontiers, qu'il a fallu prendre d'autres mesures. Lesquelles? Adopter une loi qui parle de capacité affaiblie au volant. Il m'est intéressant d'entendre tous ces arguments à propos de sanctions très sévères, alors que les dispositions concernant la capacité ne comportent même pas la peine maximale d'emprisonnement qu'entraîne un

délit ordinaire avoué, hormis une amende minimale.

Est-ce qu'il y a progrès? Je me le demande. De toute façon, je voudrais vous signaler qu'en Colombie-Britannique, et je tiens le renseignement de source fiable, que les autorités ne chercheront pas à mettre en vigueur ces nouvelles dispositions, si elles sont adoptées. Il y a quelques années, la province a institué un programme de jugement sommaire et, d'après toutes les évaluations de ce programme à ce jour, il semble qu'on ait réussi à accomplir ce que nous-mêmes, nous cherchons à accomplir, soit de débarrasser la route des chauffeurs ivres. La province a adopté l'article 203 de la loi dite Motor Vehicle Transport Act, selon laquelle tout chauffeur dont la teneur d'alcool dans le sang atteint 0.08 perd provisoirement son permis. Monsieur

[Text]

considerable number of years in and out of the criminal courts dealing with impaired drivers, I have come to the conclusion that the only effective punishment for impaired driving or driving while you are intoxicated is the licence suspension. The fine is somewhat meaningless, and the degradation of being convicted of an offence is equally meaningless. The thing that hurts is the suspension of the right to drive.

Under Section 203 of our Motor Vehicle Transport Act, we provide that anybody who has a .08 reading has his licence subject to suspension. To put that into effect, a police officer who stops a car on the road, if he suspects that the person has been drinking, gives that person an option. He can forthwith give up his licence to the police officer and walk home or call a cab as the case may be, or alternatively he can go in and he can take the test.

If he fails the test, that is to say if he has .08 or over, then the Registrar of Motor Vehicles suspends his licence for what I understand is a period of three months. If he does not take the test but surrenders his licence, he walks home and he can go 24 hours later to the police officer or to the police station and get his licence back. There is no trial. There is no magistrate involved. There are no lawyer's fees, involved, and it is a simple method of getting drivers who have been drinking off the road.

In the last year for which statistics have been referred to me, there were 3,900 people who were subjected to this test. Of the 3,900 people who were asked whether they wanted to surrender their licence or walk home, 3,750 of them walked home. So I think you can see how effective it is. You must bear in mind that in the enforcement of these provisions, if the driver is impaired in the opinion of the police officer he is nonetheless arrested for impaired driving and processed in the usual way. But this provides for the marginal case.

I recognize that perhaps there are constitutional difficulties in implementing the B.C. scheme on a national level, but what we are proposing here seems to me to be another exercise in something that is essentially going to be somewhat ineffective. The reason for that is that it applies only to the driver who in the first instance shows symptoms of impairment.

In short, it does not apply to the driver who has had a few drinks and may become impaired. He has to, in the first instance, reveal to a police officer sufficient symptoms whereby the police officer has reasonable and probably grounds to believe he is impaired. Any police officer who has such reasonable

[Interpretation]

le président, au fil des ans, j'ai assisté à bien des causes impliquant des chauffeurs ivres, et je suis maintenant convaincu que la seule sanction qui soit efficace contre de tels délits, c'est la révocation du permis de conduire. Être mis à l'amende ou être trouvé coupable ne semble avoir aucun effet sur les gens, mais ce qui leur fait mal, c'est de perdre leur permis de conduire.

En vertu de l'article 203 de la Loi sur le transport par véhicule moteur, on révoque le permis d'un chauffeur dont l'état d'ébriété atteint le chiffre 0.08. En pratique, quand un agent de police arrête un chauffeur qu'il soupçonne d'ivresse, ce dernier a le choix: soit remettre son permis de conduire à l'agent, lui laisser sa voiture et rentrer chez lui par ses propres moyens, ou bien l'accompagner au poste et se soumettre au test de l'ivressomètre.

Si l'appareil indique une teneur d'au moins 0.08, le registraire des véhicules automobiles révoque le permis de conduire du chauffeur pour trois mois, sauf erreur. D'autre part, si le conducteur remet son permis de conduire à l'agent de police, il peut le recouvrer 24 heures plus tard, soit de l'agent lui-même soit au poste de police. On élimine ainsi les comparutions, les honoraires d'avocats, etc. Voilà un moyen très simple de débarrasser la route de chauffeurs ivres.

L'an dernier, selon les données les plus récentes que j'ai pu obtenir, des 3,900 chauffeurs appréhendés, 3,750 ont choisi de rentrer chez eux à pied plutôt que de remettre leur permis. Voilà qui démontre l'efficacité de ce programme, je pense. A noter que, selon ces dispositions, l'agent de police a toujours la faculté de mettre le chauffeur en état d'arrestation pour cause d'ivresse au volant; en pareil cas, la justice suit son cours. C'est là un moyen de traiter des cas marginaux.

Je reconnais que la mise en vigueur du programme de la Colombie-Britannique à l'échelle nationale pourrait poser des difficultés d'ordre constitutionnel. Néanmoins, ce que nous proposons ici se révélera fondamentalement inefficace, à mon avis. Pourquoi? Parce que la loi ne s'applique déjà qu'aux chauffeurs qui manifestent des signes de capacité affaiblie.

Bref, elle ne s'applique pas aux chauffeurs qui ont pris quelques verres, mais chez qui l'alcool n'a pas encore fait effet. Il faut d'abord que le comportement du chauffeur donne à penser à l'agent de police que, selon toute probabilité raisonnable, ce conducteur est ivre. En pareil cas, l'agent le mettra en

[Texte]

and probable grounds in the first instance is going to arrest the man for impaired driving and he will be processed as an impaired driver, possibly with a second count of refusing to take the test, and possibly, although it is doubtful in my mind as to whether it would apply, an alternative second count of having a .08 reading.

You see, if the police officer does not proceed on the impaired charge and goes solely on the .08 reading, he is acknowledging in the first instance that there was some doubt in his mind as to whether the man was impaired, because he had to have those grounds to begin with. What I would suggest is that there is no percentage in punishing more severely drivers who already show symptoms of impairment. We want to get rid of the driver who may be impaired but it cannot be proven. I have no objection whatsoever to making an arbitrary .08 blood alcohol reading as revealed on a breathalyzer a summary conviction offence, but I think the real problem lies in what the philosophy is

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behind our laws as to when an offence should be indictable and when it should be summary conviction. You see, in Mr. Murphy's proposed amendment the penalties are exactly the same as if it were processed by indictment. He has not changed the penalties at all. He has not made it the usual summary conviction offence.

Mr. Turner: Yes, he has. I think you misunderstand him.

Mr. Hogarth: I am sorry. I understood that he had made it the minimum of \$50 fine. Then in that event I would have to reflect on whether I can support his amendment or not. But speaking further on the matter as to when an offence should be indictable and when it should be a summary conviction, it is my respectful opinion that an offence should not be indictable unless it can be said that during the commission thereof the accused had some moral culpability in doing the act. I think that there should be that element of knowledge that he was impaired.

Despite what the Minister has said, I am not satisfied that you can say that every person who has a .08 reading is impaired, or knows he is impaired. He might know he has had something to drink, but he might not have the knowledge that he had too much to drink to drive a motor vehicle. And certainly in the expert testimony we have been hearing in the criminal courts by R.C.M.P. and civil police experts, they have consistently said

[Interprétation]

état d'arrestation pour cause de capacité affaiblie au volant; l'accusation comportera peut-être un second chef, soit le refus de se soumettre au test, ou bien—mais je doute fort que ce soit possible—la présence d'alcool dans le sang à une teneur de 0.08.

Or, si l'agent de police n'invoque pas comme chef d'accusation, la capacité affaiblie, mais plutôt la teneur de 0.08 indiquée par l'ivressomètre, c'est que déjà, il n'était pas sûr que les facultés du chauffeur fussent affaiblies; or, c'est justement pour ce motif qu'il est censé l'appréhender.

Pour moi, il n'y a rien à gagner d'être plus sévère envers les chauffeurs dont les facultés sont manifestement affaiblies. Nous voulons atteindre les conducteurs chez qui cet état n'est pas démontrable. Je ne vois aucun inconvénient à ce que le chiffre de 0.08, tel qu'établi par l'ivressomètre, constitue la preuve d'une infraction punissable sur déclaration sommaire de culpabilité. Le vrai pro-

blème, à mon sens, c'est la pensée qui sous-tend la loi quant à la distinction entre acte criminel et infraction sur déclaration sommaire de culpabilité. Selon l'amendement de M. Murphy, les sanctions seraient les mêmes dans chaque cas. Il ne les change pas du tout. Pour lui, ce n'est pas une infraction sur déclaration sommaire de culpabilité, comme d'habitude...

M. Turner (Ottawa-Carleton): Mais non, vous l'avez mal compris.

M. Hogarth: Pardon, J'avais compris qu'il voulait une amende minimale de \$50. Dans ce cas-là, je dois me redemander si je peux appuyer son amendement. Je poursuis, néanmoins; quant à déterminer s'il s'agit d'un acte criminel ou d'une infraction sur déclaration sommaire de culpabilité, mon opinion est celle-ci: Mon opinion est celle-ci, qu'une infraction ne devrait pas être passible à moins qu'on puisse dire que le prévenu était moralement coupable en commettant l'acte. Le prévenu devrait savoir qu'il était en état d'incapacité ou de capacité affaiblie.

Je ne suis pas convaincu que vous puissiez dire que toute personne ayant dans le sang un taux d'alcool de 0.08 soit affaiblie ou sache qu'elle l'est. Cette personne sait qu'elle a bu, mais ne sait peut-être pas qu'elle a trop bu pour pouvoir conduire une voiture. Dans le témoignage d'experts que nous avons entendu devant les tribunaux, les témoignages indiquent toujours qu'une personne est de condition affaiblie, entre 0.05 et 0.10. Mais per-

[Text]

that a person becomes impaired between .05 and .10, but none of them will say that everybody at .08 is impaired.

Therefore it appears to me we have struck this arbitrary figure and it is calculated actually on an arbitrary machine because you see, the Borkenstein breathalyzer which we are dealing with has a built-in arbitrary figure in that it presumes that all persons exhale alcohol through their lungs at the same rate, and this may or may not be so.

Now, if we are going to have these arbitrary things it seems to me that we should stay out of the realm of indictable offences. We should say that they are summary conviction offences, the difference being of course, that the accused does not have a conviction for an indictable offence. He is not fingerprinted; he is not photographed. And I think it would have a marked bearing, although we do not know what bearing this section is going to have, on his insurance situation.

As it stands now, even though he is not impaired he may be convicted of impaired driving in the sense that the offences are all the same. It does not matter whether he is or is not impaired, the offence is exactly the same. And I think there should be some distinguishing factor here between an actual impaired driver and one who has a .08 reading. But I would certainly like to reflect on the suggestion that it be the ordinary summary conviction penalty. I think it should be the penalties that we have proposed here for indictable offences, but I do think that the offence should be summary conviction, because it would have a material bearing on the life of the accused after this conviction.

Mr. Alexander: On a point of information, Mr. Chairman.

The Chairman: To the Minister?

Mr. Alexander: No, I would direct it to the Chairman through to Mr. Murphy. I am a little confused. I was under the impression that the only amendment you were making was one that would indicate that we were talking about summary convictions only and not summary convictions in terms of the penalties that were usually handed out after persons have been convicted under summary convictions. Could you clear that up for me now?

Mr. Murphy: The amendment which I propose, Mr. Chairman, would bring into play Section 694(1) of the Code:

[Interpretation]

sonne ne dit que tout le monde, à 0.08, est de condition affaiblie.

Donc il me semble que nous avons arbitrairement fixé un chiffre, et cela est calculé grâce à une épreuve prise par une machine, parce que l'ivressomètre de Borkenstein contient un dispositif intégré qui présume que toute personne exhale de l'alcool au même taux. Il me semble qu'on ne devrait pas alors amener ceci dans le domaine des infractions passibles, mais plutôt dans celui des infractions sommaires. Le prévenu alors ne serait pas coupable d'une infraction passible de peine et ne serait pas obligé de laisser prendre ses empreintes digitales et de se laisser photographier. Nous ne savons pas quelle sera la portée de l'article, mais je pense que cela affecterait sa situation à l'égard des assurances.

A l'heure actuelle, même si ses facultés ne sont pas affaiblies, il peut être reconnu coupable de conduite avec facultés affaiblies en ce sens que toutes les infractions sont les mêmes. Ça ne fait rien que sa condition soit affaiblie ou non, l'infraction est la même. Je pense qu'il devrait y avoir un facteur établissant une différence entre un chauffeur de condition affaiblie et un chauffeur dont le sang a une teneur en alcool de 0.08 p. 100. Au sujet du fait que ce délit ne soit passible que d'une condamnation sommaire, je crois que cela devrait être les peines que nous avons proposées ici, mais je pense vraiment que le délit ne devrait être passible que d'une conviction sommaire, parce que cela aurait un effet tangible sur la vie de l'accusé après sa condamnation.

M. Alexander: J'aimerais avoir un renseignement.

Le président: Votre question s'adresse-t-elle au ministre?

M. Alexander: Non, ma question est posée au président. J'avais l'impression que, dans votre modification, on parlait de condamnation sommaire uniquement et non des condamnations sommaires par rapport aux sanctions imposées aux personnes condamnées après une accusation sommaire. Pourriez-vous préciser un peu?

M. Murphy: L'amendement que je propose ferait entrer en jeu l'article 694 du code criminel, paragraphe 1:

[Texte]

...a fine of not more than five hundred dollars or to imprisonment for six months or to both.

That is the penalty to which an accused here would be liable. There is no mandatory jail sentence as there is for a second offence under the existing and proposed Section 222.

I had in mind, and the Minister knows this, a different amendment but I have thought later about it, that there was a weakness in it. That was a minimum fine of \$50 and not more than \$500 for the first offence, a

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minimum of \$250 and not more than \$750 for a second, and so on up to a \$1,000 for a third. But when you get into that, then you get into the position where the third offender who has money is in a better position than the third offender who has not got money, and for that reason I stayed away from this type of amendment.

The Chairman: Mr. McCleave?

Mr. McCleave: I wonder if I could ask Mr. Murphy another question. I take it that there would be no minimum fine of \$50, Mr. Murphy, in your amendments to Sections 223 and 224. Is this correct?

Mr. Murphy: The way I have worded it, there would be no minimum of \$50, no.

Mr. Hogarth: That is what concerns me.

Mr. Murphy: I would be prepared to amend the amendment to make a minimum fine of \$50.

Mr. McCleave: This is why I asked, because I originally thought that it was striking out the indictable way of proceeding, but that the minimum fines would still remain the same.

Mr. Murphy: I am not sure of the order here, Mr. Chairman, but to be quite frank, I had not looked that closely at Section 694. I thought there was a minimum in it. But if it is in order, I would be quite prepared to have the amendment read a minimum fine of \$50 and a maximum of \$500.

The Chairman: Your position now is that you wish to withdraw the present amendment before the Committee and draw up a new one?

Mr. Murphy: Providing for a minimum fine of \$50 and a maximum fine of \$500 and...

The Chairman: I think this should be done in writing, Mr. Murphy, so that there is clarity.

[Interprétation]

...une amende d'au plus cinq cents dollars ou d'un emprisonnement de six mois, ou des deux à la fois.

C'est la peine dont serait passible un prévenu. Il n'y a pas d'emprisonnement obligatoire comme pour une deuxième infraction en vertu de l'article 222 actuel et proposé. Je songeais, le ministre le sait, à une autre modification, mais j'ai trouvé qu'elle comportait une certaine faiblesse. Il y avait une amende minimum de \$50. et maximum de \$500. pour une première infraction, d'au

moins \$250. et d'au plus \$750. pour une seconde infraction, et ainsi de suite jusqu'à \$1,000. pour une troisième. Mais on peut alors avoir le cas où l'inculpé d'une troisième infraction qui a de l'argent est en meilleure position que celui qui n'en a pas, et c'est pourquoi je me suis abstenu.

Le président: Monsieur McCleave.

M. McCleave: Donc, il n'y aurait pas d'amendes minimum de \$50. à la suite de vos modifications aux articles 223 et 224. Est-ce exact?

M. Murphy: Non, il n'y aurait pas de minimum de \$50.

M. Hogarth: C'est ce qui m'inquiète.

M. Murphy: Je suis disposé à modifier ma modification afin qu'il y ait une amende minimum de \$50.

M. McCleave: C'est pourquoi j'ai posé la question parce que je pensais à l'origine que cela allait supprimer l'acte criminel tout en laissant les amendes minimum au même niveau.

M. Murphy: Je ne sais pas au juste quel en serait l'ordre, mais je dois avouer que je n'aurais pas examiné d'aussi près l'article 694 qui me semblait contenir un minimum. Mais je suis disposé à inscrire dans l'amendement le minimum de \$50. et le maximum de \$500.

Le président: Vous voulez retirer votre modification et en rédiger une autre.

M. Murphy: Qui prévoirait une amende minimum de \$50.00 et maximum de \$500.00.

Le président: Cela devrait être fait par écrit afin qu'il y ait un peu de clarté.

[Text]

Mr. Murphy: Very well.

Mr. Hogarth: In your proposed sub-amendment now there is nothing concerning a second offence. He is home free.

The Chairman: Order please.

Mr. Murphy: In answer to that question, Mr. Chairman, there would not be. It would be within the discretion of the magistrate. He can, if the circumstances warrant it, imprison up to six months; he can fine up to \$500.

The Chairman: Are you prepared to draw up a new amendment?

Mr. Murphy: Yes, I am.

Mr. MacGuigan: Mr. Chairman, may we continue the discussion...

The Chairman: Mr. MacGuigan?

Mr. MacGuigan: ... while Mr. Murphy is drawing up the new amendment. Mr. Hogarth made a very eloquent case, I think, that crimes of absolute liability ought not to be regarded as being more serious than offences punishable by summary conviction. But I think there is a further distinction which should be made to the effect that not all crimes of absolute liability are exactly the same. There is the famous case that occurred during American prohibition days when a porter who was carrying a suitcase for a gentleman who had just alighted from a train, which unknown to him contained alcohol, was convicted of illegally carrying alcohol. The porter was convicted. Well that is absolute liability I suppose in its worst sense. There was no knowledge of any kind on the porter's part about what he was actually carrying; he was just carrying a suitcase.

But in this type of crime, the man knows when he is drunk. I suppose there is the possibility that the man might have alcohol poured into him by people who had kidnapped him. One occasionally sees movies based on themes like this. It is a fairly remote possibility.

Mr. Woolliams: That sounds like an examination that somebody set in a law school.

Mr. MacGuigan: I assume, Mr. Chairman, that we can agree that there is knowledge on the part of the person who would be the accused here that he has drunk a certain amount of alcohol. Now, it seems to me that what the law in this situation is doing is putting him on notice, that it is his responsibility. The onus is on him to make sure that he is not driving in a condition in which he

[Interpretation]

M. Murphy: Très bien.

M. Hogarth: Dans votre sous-amendement, il n'y a rien qui concerne une deuxième infraction. Le prévenu serait libre.

Le président: A l'ordre, s'il vous plaît.

M. Murphy: En réponse, monsieur le président, ce serait sujet à la discrétion du magistrat. Si les circonstances le justifient, il pourra emprisonner le prévenu pour six mois ou lui imposer une amende de \$500.00.

Le président: Êtes-vous disposé à rédiger votre nouvelle modification?

M. Murphy: Oui.

M. MacGuigan: Est-ce qu'on peut continuer la discussion.

Le président: Monsieur MacGuigan?

M. MacGuigan: Monsieur Hogarth a été très éloquent quand il a parlé des crimes de responsabilité absolue qu'on ne devrait pas traiter comme étant plus graves que des infractions passibles de condamnation sommaire. Mais une autre différence doit être établie, c'est que les crimes de responsabilité absolue ne se ressemblent pas tous. Il y a cette fameuse affaire, à l'époque de la prohibition américaine, du porteur qui transportait, pour un voyageur qui venait de descendre du train, une valise remplie d'alcool. Il ne le savait cependant pas. Le porteur a été reconnu coupable de transport illégal d'alcool. C'est un cas de responsabilité absolue à son meilleur. Le porteur ne savait pas ce qu'il transportait. Pour lui, ce n'était qu'une valise.

Mais dans ce genre d'infractions, l'homme sait quand il est ivre. Il se peut qu'il ait été forcé d'ingurgiter de l'alcool. On voit souvent cela dans les films, mais c'est très improbable en réalité.

M. Woolliams: Cela ressemble à un examen de droit.

M. MacGuigan: Nous serons d'accord que le prévenu sait qu'il a absorbé de l'alcool. Lorsque la loi dit que cet homme-là doit s'assurer qu'il ne conduit pas lorsqu'il se trouve dans une condition affaiblie où il présente un danger pour la vie des autres et qu'il ne conduit pas son véhicule lorsque sa condition est affectée par ce qu'il a bu.

[Texte]

causes any danger to the safety of others, that he is not driving in a condition in which his ability is in anyway significantly influenced or affected by what he has drunk.

And I therefore suggest that this is a different—there is a kind of knowledge here. This is a crime of absolute liability granted, but it is also a crime in which the accused would have knowledge which I think could be deemed to be tantamount to an intent. And therefore I would suggest that this would distinguish it from many of the cases to which Mr. Hogarth was referring in this discussion of absolute liability.

Mr. Woolliams: Mr. Chairman, there is just one thought here and I do not know how it could be—maybe the Minister may have thought about it. There has always been some

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problem under the old impaired section in reference to the words “care and control” and of course it is repeated in Section 224. You have the type of fellow who says, “Well, I think I have drunk too much”, and he pulls over to the side of the road. He cannot get rid of his keys; he stays in his automobile and he is in care and control. Now we recently had a situation like this in Calgary, where a man walks out of a cocktail lounge, goes to get into his car, and his wife says, “I think you have had too much to drink”. She goes to call a neighbour but he goes into the car, is picked up and is convicted. There was some question whether there might be a right of appeal because of the facts, but the magistrate convicted him. This business of care and control is pretty wicked. The main idea is to get people off the highway, but it is really a deterrent if he pulls off the highway because that is when he is going to be checked by the RCMP or a police officer to find out why he left the highway. This is something that has always concerned me. I do not know whether it is possible to have any protection for that class of person.

Mr. Turner (Ottawa-Carleton): In answer to that specific question, when we were discussing the substance of the amendments we discussed the care and control aspects of it and we felt that the case law on care and control was sufficiently precise now and that the difficulty of allowing someone who pulled over to the side of the road and still was in the driver's seat to escape from the provisions of the law—it might go to sentencing mind you—is that although he may have exercised the right judgment in pulling over but in remaining in care and control of his car he

[Interprétation]

Il y a donc une certaine connaissance ici. C'est une infraction de responsabilité absolue, mais aussi un cas où le prévenu aurait une conscience qui serait peut-être une volonté de commettre un crime. Il y a ici une différence avec beaucoup d'autres cas dont a parlé Monsieur Hogarth. Il s'agissait d'une responsabilité absolue.

M. Woolliams: Je pense à une chose à laquelle le ministre aussi a peut-être pensé. Dans l'ancienne loi, sur la conduite avec facultés affaiblies, il y a toujours eu un pro-

blème qui se retrouve à l'article 224. Prenons le cas du type qui a trop bu et range sa voiture le long de la route et ne peut se débarrasser des clés de sa voiture. Il demeure au volant et au contrôle. A Calgary, il y a eu un cas où l'homme est sorti du bar-salon. Il est entré dans sa voiture et sa femme lui a dit qu'il avait trop bu, et elle va chercher un voisin, mais il monte dans la voiture, et c'est alors qu'il est arrêté et trouvé coupable. Est-ce qu'il aurait un droit d'appel, étant donné les circonstances? Le magistrat l'a tout de même trouvé coupable. Si l'on veut empêcher ces gens de conduire leur véhicule, il me semble qu'on a vu à cela mais, d'habitude, c'est lorsqu'un homme a quitté le chemin que les agents de la force policière ou de la Gendarmerie royale viennent arrêter le prévenu. Je ne sais pas s'il y a une protection pour ce genre d'individu.

M. Turner (Ottawa-Carleton): J'ai répondu à cette question lorsque nous avons discuté les modifications; nous avons discuté les aspects garde et contrôle et nous étions d'avis qu'il y avait suffisamment de précédents et que la difficulté qui se présentait lorsqu'un homme garait sa voiture sur le côté du chemin, et restait au volant, pour éviter les conséquences de la loi, il avait peut-être bien exercé son jugement en se garant, mais en exerçant la garde et le contrôle de sa voiture il a exercé son jugement quant à savoir quand il pourrait reprendre la conduite de la

[Text]

leaves himself open to an exercise of judgment as to when he is in shape to start driving the car again. We have never been able to solve this problem.

The Chairman: Gentlemen, we have an amendment before us. Before I put it, does the Minister wish to make any remarks?

Mr. Turner (Ottawa-Carleton): I would like Mr. Scollin to deal with the effect of the summary conviction.

Mr. McCleave: Could the amendment be read?

The Chairman: Yes, certainly.

Mr. Turner (Ottawa-Carleton): Then I would like to speak to it, if I might.

Mr. Murphy: I was going to ask that it be read, because it is a little different than the way I put it.

The Chairman: Yes.

Mr. Turner (Ottawa-Carleton): Read it first so Mr. Scollin will know what it is all about.

Mr. Murphy: I move that Bill C-150 be amended in Clause 16 as follows:

a) by striking lines 15 to 28 inclusive on page 36 and substituting therefor:

"an offence punishable on summary conviction and is liable to a fine of not less than \$50 and not more than \$1,000.00 or to imprisonment for not more than 6 months, or both"

b) by striking out lines 36 to 42 inclusive on page 36 and lines 1 to 6 inclusive on page 37 and substituting therefore:

"an offence punishable on summary conviction and is liable to a fine of not less than \$50 and not more than \$1,000.00 or to imprisonment for not more than 6 months, or both".

Mr. J. A. Scollin, Q.C. (Director, Criminal Law Section, Department of Justice): Might I first deal with this question of the criminal record.

There is, in terms of the Code, no difference between the criminal who has been convicted under summary conviction and the criminal who has been convicted on indict-

[Interpretation]

voiture. Nous n'avons jamais pu trouver une solution à cela.

Le président: Messieurs, nous avons un amendement. Avant que je mette cet amendement aux voix, est-ce que le ministre veut faire des observations?

M. Turner (Ottawa-Carleton): Je voudrais que M. Scollin parle des effets de la déclaration sommaire de culpabilité.

M. McCleave: Pourrait-on donner lecture de l'amendement?

Le président: Certainement.

M. Turner (Ottawa-Carleton): J'aimerais alors en parler, si c'est possible.

M. Murphy: J'allais demander qu'on en donne lecture, car il diffère quelque peu du texte que j'ai proposé.

Le président: Oui.

M. Turner (Ottawa-Carleton): Donnez-en lecture d'abord, pour que M. Scollin sache de quoi il s'agit.

M. Murphy: Je propose que l'article 16 du bill C-150 soit modifié comme il suit:

a) en retranchant les lignes 18 à 32 à la page 36 et en les remplaçant par ce qui suit:

«Paragraphe (1), est coupable d'une infraction punissable sur déclaration sommaire de culpabilité, et passible d'une amende d'au moins cinquante dollars et d'au plus mille dollars ou d'un emprisonnement d'au plus 6 mois, ou des deux peines à la fois».

b) en retranchant les lignes 40 à 48, à la page 36, ainsi que les lignes 1 à 6, à la page 37, et en les remplaçant par ce qui suit:—

«de sang, est coupable d'une infraction punissable sur déclaration sommaire de culpabilité et passible d'une amende d'au moins cinquante dollars et d'au plus mille dollars ou d'un emprisonnement d'au plus 6 mois, ou des deux peines à la fois».

M. J. A. Scollin, C.R. (Directeur de la section du droit criminel, ministère de la Justice): Je veux parler de ces questions du dossier criminel.

Dans le code, il n'y a aucune différence entre le criminel qui a été jugé pour une infraction passible et celui qui l'a été sur déclaration sommaire de culpabilité. Il a com-

[Texte]

ment—he has equally committed a crime under the Criminal Code. The only difference is that he is not liable to have his record with the RCMP, his fingerprints and so on, if in fact from the very outset it was a summary conviction offence. But in terms of answerability for a crime the effect is the same. While I cannot speculate what views insurance companies would take, each is equally an infraction of the Criminal Code. The insurers have taken a pretty dim view of impaired driving and most of these up to now have been prosecuted on summary conviction.

One of the advantages of proceeding by indictment is that if the Crown does elect to proceed by indictment—and remember the penalties under this are the same, whether it goes by summary conviction or indictment—the accused does have his right to have breathalyzer machines, qualified technicians and

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all the rest of the apparatus tested by a jury of his peers, which is a right he does not have in proceedings by summary conviction.

An Hon. Member: He can have a judge alone.

The Chairman: Order, please.

Mr. Scollin: Either judge alone or judge and jury, but he does have additional rights to elect as to mode of trial if the Crown does consider the thing serious enough to proceed by indictment. And there are obviously cases, even if this were regarded as an absolute liability offence, where the Crown might very well want to proceed by indictment. An example would be the chap who, for the 10th time in the month of October, has been picked up for having blood alcohol content of plus .08. Surely there is some point at which the Crown would be fairly entitled to say "You have been terribly, terribly naughty and we do think that proceeding by indictment in your particular case is justified."

There is also the situation where in the case of a charge of causing death by criminal negligence in the operation of a motor vehicle, knowing the difficulties as a practical matter that the Crown has to secure a verdict here where there is evidence that the blood alcohol was beyond .08 this might be a good reason for adding this as a second count to the indictment, which would not be open to the Crown in the case of a summary conviction offence only.

As far as the question of impairment is concerned, is there not something to be said for the point of view that the statistics indicate that there is such a significant impair-

[Interprétation]

mis un crime selon le Code criminel. La seule différence est ceci: il n'est pas sujet à ce que son dossier soit avec la Gendarmerie royale, ni à ce que l'on prenne ses empreintes digitales. Mais le fait est le même et bien que je ne puisse pas spéculer sur ce que les compagnies d'assurance décideraient, c'est une infraction du Code criminel. Les assureurs ont bien étudié la question et la plupart de ces cas ont été jugés coupables sur déclaration sommaire de culpabilité.

L'un des avantages de la condamnation, c'est que si la Couronne se décide de procéder par voie d'infraction passible, le prévenu a le droit à la preuve par ivressomètre et il peut avoir un jury. Ce droit ne lui est pas disponible lorsqu'il y a infraction punissable par déclaration sommaire de culpabilité

Une voix: Il peut avoir un juge seul.

Le président: A l'ordre, s'il vous plaît.

M. Scollin: Un juge seul, ou un jury, mais il a d'autres droits quant au tribunal qui doit le juger, si la Couronne décide de procéder par voie d'acte criminel. Il y a des cas où, même s'il s'agit d'un délit concernant la responsabilité, la Couronne pourrait peut-être procéder par voie d'acte criminel. Ainsi, pour la dixième fois, en octobre, un homme est accusé d'avoir une teneur en alcool, dans le sang, de plus de .08 p. 100. La Couronne devrait pouvoir dire: «vous n'avez pas été sage du tout et nous pensons que dans votre cas on devrait pouvoir procéder par voie d'accusation d'acte criminel.»

Lorsqu'il y a accusation d'avoir causé la mort due à la négligence, à la conduite d'une voiture, nous savons qu'il est très difficile pour la Couronne d'obtenir des témoignages, mais lorsqu'il y a un témoignage que le contenu d'alcool était de .08 p. 100, on pourrait peut-être ajouter cela au chef d'accusation, tandis qu'on ne pourrait pas dire cela si l'accusation était sur déclaration sommaire de culpabilité.

Quant à la question des facultés affaiblies, on peut dire que les statistiques indiquent qu'il y a une telle faculté affaiblie, même si les preuves chimiques ne l'indiquent pas, le

[Text]

ment of judgment, even though the clinical signs may not be present, that this can properly be classed as a case where judgment is less than it should be at .08.

I do not think there are any other points that I would like to deal with. These are some of the points that were made by Mr. Hogarth and Mr. Murphy.

Mr. Turner (Ottawa-Carleton): Mr. Chairman, I have heard these arguments before. On both sides of the House we have had a pretty thorough examination of our own attitudes. What we are trying to do in a collective way here is to exercise the best judgment we can as parliamentarians. I am trying my best to convince you that I feel that the public would best be served by maintaining the penalty similar on these three offenses. Sure, .08 is an arbitrary figure. But it is an arbitrary figure based on pretty sound research and pretty sound medical knowledge. It has been recommended by the Canadian Bar Association. The Canadian Medical Association wants it at .05, Quebec is going to put it in at .05, Manitoba wanted it at .08, the U.K. legislation had it at .08, and the evidence that we have indicates overwhelmingly that impairment exists in every human being to a more or less significant degree at that stage.

We set an arbitrary figure. Mr. Mather brought up that we have arbitrary speed limits—30, 40, 50, 60 and 70 miles an hour. There are those of us who are safer at 70 miles an hour than someone else with less skill at 30 miles an hour. Yet we set that arbitrary figure right across the board for every driver, no matter how skilled he is, no matter what his reactions are, no matter what his state of health, no matter what his state of fatigue and no matter what his age. And we allow the speed that he is trapped at, or caught at, to be evidence of whether that driving not only amounts to a breach of the speed limit but to careless driving or dangerous driving. There is nothing new in evidence adduced on one charge being admissible in testing another charge. There is nothing unusual, in other words, of evidence of a state of alcohol in your blood being used as part of the factual evidence on impairment.

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I think that Mr. Scollin has dealt quite properly with the limitations that this would place on the Crown if Mr. Murphy's amendment were to be accepted. I think it would deprive the Crown and the court of the necessary flexibility that it now has of going either by way of summary or indictable offence. By

[Interpretation]

jugement est moins qu'il ne devrait être au niveau de .08 p .100.

Je ne crois pas qu'il y ait d'autres observations à faire. MM. Hogarth et Murphy ont soulevé certains points.

M. Turner (Ottawa-Carleton): Monsieur le président, j'ai entendu tous ces arguments déjà. Des deux côtés de la Chambre, nous avons examiné assez longuement toute cette question de ce que nous voulons faire ici. A titre de parlementaires, nous devons juger la chose de la meilleure façon possible. Il faut se servir de notre jugement et je veux essayer de vous convaincre qu'à mon avis il vaudrait mieux conserver des peines identiques pour ces trois offenses. Il est certain que le chiffre de .08 est un chiffre arbitraire, mais c'est un chiffre arbitraire qui est fondé sur des recherches sérieuses et des connaissances médicales. Il nous a été recommandé par l'Association du barreau canadien. L'Association médicale canadienne veut le fixer à .05, le Québec va le fixer à .05, le Manitoba veut .08, le Royaume-Uni l'a fixé à .08, et dans l'ensemble il est à peu près évident que l'état d'ivresse existe à un degré plus ou moins élevé à ce niveau-là.

Nous avons fixé un chiffre arbitraire. M. Mather a dit qu'il y avait des limites de vitesse arbitraires sur les routes: 30, 40, 50, 60, et 70 milles à l'heure. Il y a des conducteurs qui sont moins dangereux à 70 milles à l'heure que d'autres qui roulent à 30 milles à l'heure. Nous avons tout de même établi ces limites arbitraires d'un bout à l'autre du pays et elles s'appliquent à tous les chauffeurs de voiture, quels que soient leur âge, leur compétence, leur habileté au volant, leurs réactions, leur santé, leur degré de fatigue. C'est la vitesse à laquelle il se fait attraper qui permet de déterminer s'il conduit dangereusement; il n'y a rien de nouveau dans le fait que le niveau d'alcool dans le sang peut servir de mesures de l'ivresse.

Je crois que M. Scollin a bien exposé quels seraient les problèmes qui se poseraient à la Couronne si l'on adoptait l'amendement de M. Murphy. Cela enlèverait à la Couronne et au tribunal le pouvoir de faire des condamnations. Selon l'expérience, les sanctions sont les mêmes dans le cas de la déclaration sommaire

[Texte]

way of experience, the penalties have been the same under summary or indictable offence under these sections. If the Crown takes a serious view of it then the accused is entitled to judge alone or judge and jury, if he wishes. There is something to be said for a mandatory suspension of licences, as Mr. Hogarth said. We did not choose that point of view. That is probably more properly left at this stage of provincial legislation. As a matter of fact, that is not necessarily a just way to deal with things.

If you make it a mandatory suspension of sentence, a taxi driver or someone who depends for his livelihood on the use of his car is more seriously affected than someone who is not. A mandatory summary proceeding in the same way deprives the court and the Crown of the flexibility to treat people in ways that will mete out a proper punishment.

I want to say to you again that I think the United Kingdom experience is fairly conclusive. The penalties are the same and they must have gone through the same process that we have. The statistics concerning the deterrent values are also pretty overwhelming. That act came into force early in October of 1967. The statistics for the first 12 months after the introduction of the legislation show a remarkable decline in traffic deaths and injuries. There was an over-all reduction of 40,459 casualties, which is roughly a 10 per cent reduction from the previous year. This was made up of 1,152 fewer people killed, 11,177 fewer people seriously injured and 28,130 fewer people slightly injured. The important point is that the reduction in casualties was most marked in the hours from 10 o'clock at night until 4 o'clock in the morning, which is the worst period for accidents associated with alcohol. The reduction in the casualty rate between 10 o'clock at night and 4 o'clock in the morning was a startling 33 per cent. I do not think you can argue with that type of figure. For Saturday night and Sunday morning the reduction in casualties was approximately 40 per cent. That is what we are talking about, and while I recognize the arguments that have been made by some pretty good defence counsel here in defending the rights of a drinking driver, I think the offence is committed when the person consumes the alcohol and then gets into a motor car and drives it away, and the courts will strictly construe these sections, as they should, because they are part of a criminal statute and the benefit of the doubt will be given in favour of the accused. However, I think as legislators it is our duty to look at this in terms of the seriousness of the problem and to not only think in terms of the

[Interprétation]

de culpabilité ou du délit, en vertu de ces articles. Si la Couronne décide que la question est grave, l'accusé peut avoir recours à un juge seulement, ou à un juge et jury. M. Hogarth dit que, dans certains cas, il est bon de suspendre le permis. Nous n'avons pas choisi ce point de vue. Il est mieux dans certains cas de s'en remettre aux lois provinciales, et, en fait, ce n'est pas nécessairement une façon juste de régler le problème.

S'il s'agit d'une suspension obligatoire de sentence, un chauffeur de taxi, ou quelqu'un qui gagne sa vie grâce à sa voiture, est plus affecté qu'une autre personne. De même, s'il s'agit d'une peine obligatoire, cela enlève au tribunal et à la Couronne le droit de fixer des peines adoptées au délit.

Je voudrais répéter qu'à mon avis, l'expérience de la Grande-Bretagne est concluante. Les peines y sont les mêmes qu'ici et ils doivent certainement avoir connu la même évolution que nous connaissons. Les statistiques concernant l'effet préventif de la peine sont aussi assez concluantes. Cette loi est entrée en vigueur en octobre 1967. Douze mois après sa mise en vigueur, on a constaté une réduction remarquable des accidents de la route. Il y eut une réduction de 40,459 accidents, soit environ 10 p. 100 par rapport à l'année précédente. Il y eut une réduction de 1,152 dans le nombre des morts, 11,177 dans le nombre des blessés graves et 28,130 chez le nombre des blessés légèrement. La baisse des accidents a été la plus marquée entre 22 h. et 4 h., ce qui est la période où se produisent le plus d'accidents dus à l'alcool; cette baisse est de l'ordre de 33 p. 100, ce qui est quand même assez remarquable. Je ne crois pas qu'on puisse contester l'éloquence de chiffres comme ceux-là. La réduction des accidents du samedi soir et du dimanche matin, est de 40 p. 100. C'est de cette question dont nous parlons, et, bien que je reconnaisse les arguments qui ont été apportés par de très bons avocats pour défendre les droits de conducteurs qui avaient consommé de l'alcool, je crois que le délit est commis au moment où une personne consomme de l'alcool, monte ensuite dans une voiture automobile et prend la route, et les tribunaux interpréteront ces articles rigoureusement, comme il se doit, parce qu'ils sont tirés d'une loi pénale, et le bénéfice du doute favorisera l'accusé. Je crois qu'en qualité d'administrateurs notre devoir est d'envisager la question du point de vue de la gravité du problème et non pas seulement du point de vue de la défense des personnes qui sont

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defence of a drinking driver but also in terms of the defence of the people who are killed and maimed on Canadian roads. That is why I am asking the Committee to back us up on this.

Mr. Murphy: I have one question.

The Chairman: Just one question, please, before we proceed with the vote.

Mr. Murphy: It is really a point of information. The Minister stated that the Canadian Bar Association recommended .05 as an arbitrary figure, I believe.

Mr. Hogarth: No, he said the Canadian Medical Association.

Mr. Murphy: Did you not say the Canadian Bar Association recommended .05 or .08.

Mr. Turner: Point zero eight.

Mr. Murphy: Did they not also recommend that it be a summary conviction offence?

Mr. Turner: That is what they did, but they did not give any reason. They did not go into it. I might say that Mr. Murphy ought to have the words "or both" in his amendment with respect to fine or imprisonment.

Mr. Murphy: All right, "or both", to keep it in line with all the other sections of the Code. I do not understand why "or both" is in the other sections.

Mr. Turner: I think we have had a good debate here.

The Chairman: Gentlemen, we will now vote on the amendment proposed by Mr. Murphy.

Amendment agreed to.

Clause 16, proposed sections 222, 223, 224 and 224A, as amended, agreed to.

Mr. Woolliams: Mr. Chairman, could we call it a day? Some of us have been here all day.

The Chairman: Yes, I know; most of us have. I think this would be in order. We will meet again tomorrow at 3.30 p.m. Perhaps I am being rather Utopian but I do feel there is a possibility, if we proceed with some dispatch, that we can perhaps complete this bill by late Thursday. This is the reason for hav-

[Interpretation]

tuées et blessées sur les routes du Canada. C'est pourquoi je demande au Comité de nous accorder son appui sur cette question.

M. Murphy: Une question.

Le président: Une question seulement, s'il vous plaît, avant de procéder au vote.

M. Murphy: C'est un renseignement, en fait. Le ministre a dit que l'Association du Barreau canadien a recommandé .05 à titre de chiffre arbitraire je crois.

M. Hogarth: Non, il a dit l'Association médicale canadienne.

M. Murphy: Avez-vous dit que l'Association du Barreau canadien a recommandé .05 ou .08?

M. Turner: .08.

M. Murphy: L'Association n'a-t-elle pas également recommandé que ce soit une condamnation par déclaration sommaire de culpabilité?

M. Turner (Ottawa-Carleton): En effet, mais ils n'ont pas donné de raison. Ils n'ont pas approfondi. Je dirais que M. Murphy devrait insérer dans son amendement les mots «ou les deux à la fois» en ce qui a trait à l'amende ou à l'emprisonnement.

M. Murphy: Très bien. «ou les deux à la fois» pour garder l'unité avec les autres articles du Code. Je ne comprends pas pourquoi il y a les mots «ou les deux à la fois» dans les autres articles.

M. Turner (Ottawa-Carleton): Je crois que nous avons eu un bon débat.

Le président: Messieurs nous allons maintenant mettre aux voix l'amendement proposé par M. Murphy.

L'amendement est approuvé.

A l'article 16, les articles 222, 223, 224 et 224A du Code, avec leurs amendements, sont approuvés.

M. Woolliams: Monsieur le président, pourrions-nous lever la séance? Certains d'entre nous ont passé la journée ici.

Le président: Oui je sais, c'est le cas de la plupart d'entre nous. Je crois que cela conviendrait. Il y aura séance demain à 3 heures 30. Je suis peut-être idéaliste, mais je crois qu'il est possible, si nous procédons rapidement, de terminer l'étude de ce bill jeudi, peut-être tard jeudi. C'est la raison pour

[Texte]

ing a meeting on Wednesday afternoon.

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Tomorrow we will proceed with the insanity and the probation clauses and there are also two clauses on appeal. We can then proceed to some of the clauses pertaining to the Solicitor General's Department on parole.

Mr. Woolliams: I want to make this suggestion with respect to those clauses. Unless someone has something they really want to change, and they seem to be pretty good clauses from my point of view...

The Chairman: Which ones are you referring to?

Mr. Woolliams: Perhaps someone has some change, and they seem to be pretty good that is one phase in which we could move along rather quickly.

The Chairman: Which clauses are you referring to?

Mr. Woolliams: The clauses in reference to parole and appeal.

Mr. Hogarth: They were all done while you were out in the boondocks.

An hon. Member: Parole has not been done.

Mr. Hogarth: No, parole has not been done.

Mr. Woolliams: Have the ones as to appeal been covered?

Mr. Hogarth: Appeal has not been covered.

The Chairman: If we took five minutes I think we could cover Clauses 44 and 45.

Mr. Alexander: It is on page 61.

The Chairman: If we can agree without any extended argument we might get through this.

Mr. Hogarth: Mr. Chairman, there might be a lengthy question with respect to Clause 45. I understood the Minister was going to consider an amendment to that section. It deals with a direct indictment.

The Chairman: Mr. Murphy?

Mr. Murphy: One other thing was brought to my attention by Judge Vannini. I am sure it is just an oversight. It is included in Clause 44 and I am going to have to dig it out. It is a

[Interprétation]

laquelle il y aura une réunion mercredi après-midi. Demain, nous allons passer aux articles sur les maladies mentales, la liberté surveillée et il y a deux paragraphes sur l'appel. Nous pourrons ensuite passer à des articles qui portent sur le ministère du solliciteur général et la mise en liberté conditionnelle.

M. Woolliams: En ce qui a trait à ces paragraphes, je voudrais faire une proposition. A moins que quelqu'un ait réellement l'intention d'y changer quelque chose, et je crois que ce sont d'excellents articles à mon point de vue...

Le président: De quels articles parlez-vous?

M. Woolliams: Quelqu'un désire peut-être apporter des changements. Il me semble que c'est un domaine où nous pourrions aller assez vite.

Le président: De quels articles parlez-vous?

M. Woolliams: Ceux qui traitent de la libération conditionnelle et de l'appel.

M. Hogarth: Je crois qu'ils ont tous été revus alors que vous étiez ailleurs.

Une voix: La libération conditionnelle n'a pas été examinée.

M. Hogarth: Non, pas la libération conditionnelle.

M. Woolliams: Les articles sur l'appel ont-ils été vus?

M. Hogarth: L'appel n'a pas été vu.

Le président: Si nous prenons 5 minutes, je crois que nous pourrions voir les articles 44 et 45.

M. Alexander: C'est à la page 61.

Le président: Si nous pouvons nous mettre d'accord sans grandes discussions, nous pouvons passer ça.

M. Hogarth: Monsieur le président, il pourrait y avoir une longue question au sujet de l'article 45. J'ai cru comprendre que le ministre songeait à apporter un amendement à cet article. Il est question d'une condamnation directe.

Le président: M. Murphy?

M. Murphy: Une autre chose a été portée à mon attention par le juge Vannini. C'est juste un oubli, j'en suis sûr. Cela fait parti de l'article 44 et il me faudra le trouver. C'est

[Text]

very technical matter and it has something to do with who will notify the Crown Attorney in the event there is an appeal, and apparently it has been overlooked.

Mr. Christie: Clause 44 has nothing to do with appeals.

Mr. Murphy: Then it is in another clause, I am sorry.

The Chairman: Clauses 44 and 45 deal with direct indictment.

Mr. Turner (Ottawa-Carleton): Yes, direct indictment.

The Chairman: Is there any possibility of getting these passed now?

Mr. Hogarth: I wanted to speak on Clause 45. I am sorry, Mr. Chairman, I know how anxious you are to get these clauses through but if we amend subsection 2 of Section 2 we will then be in a position where the Deputy Attorney General can prefer a direct indictment.

Mr. Christie: No, not a direct indictment.

Mr. Turner (Ottawa-Carleton): No.

Mr. Hogarth: I am concerned about this wording in Clause 45:

“(3) Notwithstanding anything in this section, where (a) a preliminary inquiry has not been held,...

My problem is that very often on an assize you get a committal for trial on a charge of carnal knowledge and after the committal for trial you talk to the complainant and you realize it should have been a rape indictment in the first instance. Crown counsel is now prohibited from preferring that indictment without referring the matter to the Attorney General, and this is going to hang up a great many assize cases.

Mr. Christie: No, he could prefer the indictment if it arose out of the evidence in the deposition.

Mr. Hogarth: This is my problem. It says “where a preliminary inquiry has not been held” and a preliminary inquiry was never held into the rape, it was held into the carnal knowledge.

Mr. Christie: Yes, but that does not change the rule in the other section, Mr. Hogarth.

[Interpretation]

une question très technique qui a quelque chose à voir avec qui sera la personne qui avertira le procureur de la Couronne quand il y a appel. Il semble que cette question ait été oubliée.

M. Christie: L'article 44 n'a rien à voir avec les appels.

M. Murphy: Alors c'est un autre article. Je m'excuse.

Le président: Les articles 44 et 45 traitent de la condamnation directe.

M. Turner (Ottawa-Carleton): Oui, de la condamnation directe.

Le président: Est-il possible de les passer maintenant.

M. Hogarth: J'avais quelque chose à dire sur l'article 45. Je regrette, monsieur le président, je sais que vous avez hâte de finir l'étude de ces articles, mais si nous amendons le paragraphe 2 de l'article 2 à ce moment-là le procureur général adjoint peut préférer une accusation directe.

M. Christie: Non, non pas une accusation directe.

M. Turner: Non.

M. Hogarth: Ceci me préoccupe, le libellé dans l'article 45:

«(3) Nonobstant toute disposition du présent article, ou
(a) une enquête préliminaire n'a pas été tenue...»

Le problème que je me pose c'est que souvent en cour d'assises, vous avez une mise en accusation pour connaissance charnelle et après la mise en accusation vous parlez au plaignant et vous vous rendez compte que l'accusation première aurait dû en être une de viol. Il est maintenant défendu au procureur de la Couronne de porter cette accusation sans avoir soumis le cas au procureur général et ce procédé retardera un grand nombre de causes entendues par la cour d'assises.

M. Christie: Non, il pourrait porter l'accusation si elle émanait du témoignage contenu dans la déposition.

M. Hogarth: C'est là le problème. L'article dit: «quand une enquête préliminaire n'a pas été tenue», et il n'y a jamais eu d'enquête préliminaire dans le cas du viol; elle a eu lieu pour une accusation de connaissance charnelle.

M. Christie: Oui, mais cela ne change pas la règle dans l'autre article, monsieur Hogarth.

[Texte]

Mr. Hogarth: I may be wrong. The rape evidence may not arise in the preliminary inquiry, and particularly where you have...

Mr. Christie: If you have a preliminary inquiry and then you want to have the man tried by a judge and jury on an offence that is completely unrelated to the evidence at the preliminary inquiry you will then have to go to the Attorney General.

Mr. Hogarth: There is the problem, it is completely unrelated. You have these situations where a preliminary inquiry is held—take carnal knowledge as an example—and after the preliminary inquiry, when the Crown prosecutor in the upper court interviews the complainant, it appears that the proper indictment in the first instance should have been rape. It seems to me that Crown counsel should have the authority to lay the rape indictment without the necessity of referring the matter to the Attorney General. I say that because the matter would delay the

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trial some four or five days or even a week, and if you get into an assize situation where the judge is most anxious that you proceed with continuity you are going to have to wait a week to get a new indictment, so I really think the words "preliminary inquiry" in Clause 45 as they are now set out should be given some very close scrutiny because we are getting into some difficult situations so far as...

Mr. Christie: I might say that this was discussed at last year's uniformity meeting with all the members of the criminal law section, and the practice that is followed today in all the provinces—except apparently in British Columbia—is the policy embodied in Clauses 44 and 45.

Mr. Hogarth: I previously pointed out today that some of our policies are much superior, and this happens to be another example of that. It is extremely difficult to hold an accused in custody for an additional week, particularly in an up-country assize, while you are awaiting the signature of the Attorney General on an indictment.

Mr. Christie: The other side of the coin, Mr. Hogarth, is that it is considered, if a person has not had a preliminary inquiry or if he has been discharged, the chief law officer of the Crown in the province should

[Interprétation]

M. Hogarth: Les preuves de viol ne sortent pas toujours au cours de l'enquête préliminaire.

M. Christie: S'il y a enquête préliminaire, et ensuite si vous voulez que la personne soit jugée par un juge et un jury pour un délit qui n'a aucun rapport avec la preuve de l'enquête préliminaire, vous devrez alors vous adresser au procureur général.

M. Hogarth: Voilà le problème, il n'y a absolument pas de relation. Vous avez des cas où il y a enquête préliminaire, celui de connaissance charnelle, par exemple, après l'enquête préliminaire, quand le procureur de la Couronne questionne le plaignant et qu'il réalise qu'au départ la bonne accusation aurait dû en être une de viol. Il me semble que le procureur de la Couronne devrait avoir le droit de porter l'accusation de viol, sans qu'il lui soit nécessaire de reporter la question au procureur général. Et je le dis parce que la question retarderait le procès de quatre ou cinq

jours, une semaine même, et si vous vous trouvez devant une cour d'assises où le juge est très désireux que la cause procède avec continuité, il vous faudra attendre une semaine pour vous procurer une nouvelle accusation. Je pense donc vraiment que les mots: «enquête préliminaire» de l'article 45, comme il est présentement formulé, mériteraient d'être examinés soigneusement parce que nous nous préparons à des situations difficiles pour ce qui est...

M. Christie: Je dirais que ceci a été discuté, lors de la séance de l'an dernier sur l'uniformité, par tous les membres de la section du droit pénal, et la pratique suivie aujourd'hui dans toutes les provinces, à l'exception semble-t-il de la Colombie-Britannique, est la politique établie dans les articles 44 et 45.

M. Hogarth: J'ai fait ressortir aujourd'hui que quelques-unes de nos politiques sont supérieures, et en voilà un autre exemple. Il est extrêmement difficile de garder un accusé en cellule pendant une semaine supplémentaire, particulièrement aux assises d'un pays civilisé, pendant que vous attendez la signature du Procureur général à propos d'une accusation.

M. Christie: L'autre côté de la médaille, monsieur Hogarth. C'est que si une personne n'a pas eu d'enquête préliminaire ou si elle a été libérée, on considère que le conseiller juridique en chef dans la province devrait

[Text]

personally assume the responsibility of directing that person to stand trial. That is the policy.

Mr. Hogarth: I can see that, where there has been no preliminary inquiry at all, but where there has been one, and the accused is well aware of the nature of the evidence, it concerns me. In a sense, it conflicts with the earlier section dealing with speedy trials, where the prosecutor is entitled to lay all counts which arise out of the evidence given at the preliminary hearing, whether they are included offences or not. I think it is section 427.

Mr. McCleave: Perhaps that point could be considered overnight, in that we are meeting at 3.30 in the afternoon.

The Chairman: Is it the wish of the Committee that we hear one further member, and then perhaps make a judgment on this particular section?

Mr. Chappell: Mr. Chairman, I am not going to be here tomorrow and I would appreciate it if I could bring something to the Minister's attention on Sections 44 and 45. May I do so?

The Chairman: Mr. Chappell I concede your point. You will not be here tomorrow.

Mr. Chappell: I am somewhat concerned in that after there has been a judicial hearing by the magistrate, or a judge, and the person has been discharged because there is not sufficient evidence, the Attorney General could now proceed under subsection (b) of both sections.

It strikes me this is a ministerial officer reviewing what a judicial officer has done and taking it to a different judicial forum.

I raise these points for your consideration. One is, would it be something like a stick over a magistrate, or a judge, that, if he discharges, the Attorney General may proceed in another way under subsection (b)? And, second, does this hold at least the lower judiciary, the magistrates, in disrepute? I have heard the argument that it gives the attorney general some power to disregard the result brought about by, perhaps, an incompetent or a petulant magistrate, and to bring the matter on again. But it strikes me that one may argue, with equal force, should we question that judicial person's decision when it could be contested perhaps by a ministerial person who might be equally petulant or equally incompetent?

[Interpretation]

se charger personnellement de faire comparaître cette personne. C'est le règlement.

M. Hogarth: C'est compréhensible dans certains cas il n'y a pas eu d'enquête préliminaire, mais lorsqu'il y en a eu une, et que l'accusé se rend bien compte de la nature de la preuve, c'est cela qui m'inquiète. Dans un sens, cela est contraire à l'article mentionné précédemment et qui porte sur les procès expéditifs où le procureur a le droit d'exposer tous les chefs d'accusation qui se dégagent des témoignages lors de l'enquête préliminaire, que les délits soient inclus ou pas. Je pense que c'est l'article 427.

M. McCleave: Nous pourrions peut-être étudier cette question la nuit, étant donné que nous devons nous réunir à 3.30 de l'après-midi.

Le président: Le Comité désire-t-il entendre un autre député et rendre ensuite un jugement à ce sujet?

M. Chappell: Monsieur le président, je ne serai pas ici demain, par conséquent, je voudrais pouvoir attirer l'attention du ministre sur les articles 44 et 45.

Le président: Monsieur Chappell, je vous donne la parole, puisque vous ne serez pas ici demain.

M. Chappell: Je suis quelque peu inquiet de constater que lorsqu'il y a eu enquête judiciaire de la part d'un magistrat ou d'un juge et que la personne a été libérée faute de preuves suffisantes, le procureur général pourrait à présent poursuivre la procédure en vertu de l'alinéa b) des deux articles.

Je suis étonné par le fait que c'est un fonctionnaire du ministère qui revise les actes d'un représentant de la justice et le traduit devant un autre tribunal. Voici les points que je soumets à votre attention: d'abord, si un magistrat ou un juge libère un accusé, peuvent-ils craindre que le procureur général agisse autrement, conformément à l'alinéa b)? Et en deuxième lieu, cela discrédite-t-il les fonctionnaires subalternes de la justice et les magistrats? Il paraît que cela donne au procureur général un certain pouvoir de contester la décision prise peut-être par un magistrat incompetent ou de mauvaise humeur, et de refaire le procès. Mais ce qui me frappe également, c'est que l'on peut tout aussi bien mettre en doute la contestation du fonctionnaire ministériel qui peut être tout aussi un compétent.

[Texte]

Mr. Turner (Ottawa-Carleton): May I answer that briefly? First of all, I think we have got to be clear here, Mr. Chappell. In Clause 45 the preferred indictment has to be preferred by the written consent of the attorney general personally and not delegated, and, therefore, it is taken by somebody responsible directly to the legislature—by a responsible public officer.

Does it denigrate the role of the magistrate? I do not think so. It must, in those rare cases, be a situation in which the attorney general feels the issue should go before a judge and jury. After all, it is the judge and jury that will have the final determination of this matter.

It will only be exercised by the attorney general where he feels that an issue was improperly taken away from a judge and jury and that the magistrate was so much in error that he improperly withheld a *prima facie* case. But the ultimate decision will be made by a judge and jury. And that is where the real issue, if there is an issue, ought to be resolved.

Therefore, the responsibility will be tested on his judgment of the public interest before the legislature; that is the brake there. Yet he must exercise that office not only on behalf of the accused but on behalf of the people, to make sure that the issue is properly tested before a judge and jury. That is the reason for this out-of-the-ordinary procedure.

Mr. McCleave: Mr. Minister, do not such powers, or similar powers, now exist in the law?

Mr. Turner (Ottawa-Carleton): Yes; but because of the Biernacki case it was taken away, which was a situation where the magistrate had dismissed it. The Attorney General could still proceed directly by way of preferred indictment, but if it had gone before a magistrate and a magistrate had dismissed it, then the Biernacki case dissolved the Attorney General's discretion. We want to restate the law as we understood it before the Biernacki case was decided.

The Chairman: Gentlemen, shall Clause 44 carry?

Clause 44 agreed to.

On Clause 45...

Mr. MacGuigan: Mr. Chairman it ought to be held over. There is a technical amendment to Clause 45.

The Chairman: I suggest that we stand Clause 45, then. What is your amendment?

[Interprétation]

M. Turner (Ottawa-Carleton): Puis-je répondre brièvement à cette question? Tout d'abord, monsieur Chappell, je crois qu'il faut dire clairement ce qu'il en est. Selon l'article 45 du bill, la mise en accusation doit être consentie personnellement et par écrit, par le procureur général au lieu d'être faite verbalement, et par conséquent elle est prise par une personne qui relève directement de la législature, c'est-à-dire par un fonctionnaire responsable. Cela veut-il dire que le rôle du magistrat est amoindri? Je ne le crois pas. Dans les rares occasions, c'est le procureur général qui doit voir si le cas doit être renvoyé devant un juge et un jury. Après tout, c'est le juge et le jury qui devra trancher définitivement la question.

Ces pouvoirs ne seront utilisés par le procureur général que lorsqu'il croit qu'une cause a été injustement enlevée au juge et au jury et que le magistrat était tellement dans le tort qu'il a refusé de tenir compte du témoignage *prima facie*. Mais, en fin de compte, la décision sera prise par un juge et un jury. C'est là où la question doit être tranchée. Par conséquent, c'est d'après sa façon de concevoir l'intérêt public que sera faite la preuve de son sens de la responsabilité; cependant, il doit remplir ses fonctions, non seulement envers l'accusé mais aussi envers le peuple pour s'assurer que la cause est convenablement exposée devant un juge et un jury. C'est ce qui explique cette procédure tout à fait inusitée.

M. McCleave: N'existe-t-il pas actuellement dans la loi, des pouvoirs de ce genre?

M. Turner (Ottawa-Carleton): Oui; mais à cause de l'affaire Biernacki, ces pouvoirs ont été retirés, alors que le magistrat avait classé l'affaire. Le procureur général pouvait quand même poursuivre directement l'affaire par accusation, mais si l'affaire avait été portée devant un magistrat, l'affaire Biernacki aurait annulé la liberté d'action du procureur général. Nous voulons formuler la loi telle qu'elle était avant l'affaire Biernacki.

Le président: L'article 44 est-il adopté?

L'article 44 est adopté.

L'article 45.

M. MacGuigan: Monsieur le président, cet article devrait être retenu. Il y a une modification d'ordre technique.

Le président: Je suggère donc de réserver l'article 45 du bill. Quel est votre amendement?

[Text]

Mr. MacGuigan: It is just to bring it into line with what we did in changing the definition of "Attorney General" in Section 2. There is an omission in the bill which failed to take account of the effect of that change on this section. It is merely to delete several words which are in the present section.

The Chairman: Do you have the amendment in writing?

Mr. MacGuigan: May I dispense with reading it?

The Chairman: Yes.

Mr. Hogarth: Do you want to clear up a point first, Mr. Christie?

Mr. Christie: Mr. Hogarth, you and I are in agreement that when you are preparing your indictment after a preliminary inquiry you can include in it any charges on which evidence supporting them was brought out at the preliminary inquiry, even though he was not charged with those offences at the preliminary inquiry?

Mr. Hogarth: Yes; to a very limited extent, though, once you put this in.

Mr. Christie: How does this affect that Mr. Hogarth?

Mr. Hogarth: Let us take the example I used previously. The charge in the initial instance is carnal knowledge, and even during the course of the preliminary hearing it is indicated that it might be rape. Suppose in the preliminary hearing you do not show that the complainant and the accused were not married, so that actually there is not a complete rape case at the preliminary hearing. I think the Crown prosecutor should have the power to use his discretion and prefer a rape indictment in the higher court; and, of course, the evidence that they are not married could be adduced in the higher court.

This will crop up in many, many different ways, where the exact offence that you want to prefer in the higher court is not included in all the evidence at the preliminary hearing. It is obviously there by virtue of calling another witness and establishing it. I think that Crown counsel, as we have always done, should have the discretion to lay the indictment rather than have to refer it all the way back to the attorney general.

Mr. Christie: You say that there are many, many ways, but our information is that these so-called special or preferred indictments are relatively rare.

Mr. Hogarth: I would not say that they are relatively rare. I think in the famous Sommers case where were about three of them.

[Interpretation]

M. MacGuigan: Il s'agit simplement de le faire concorder avec le changement que nous avons apporté à l'article 2 en ce qui concerne de biffer certains mots de l'article actuel.

Le président: Avez-vous l'amendement en mains?

M. MacGuigan: Puis-je me dispenser de le lire?

Le président: Oui.

M. Hogarth: Monsieur Christie, avez-vous quelque chose à formuler?

M. Christie: Monsieur Hogarth, vous êtes d'accord avec moi que lorsque vous préparez votre accusation, après l'enquête préliminaire, vous pouvez y inclure tout chef d'accusation dont les preuves à l'appui ont été exposées au cours de l'enquête préliminaire, même s'il n'a pas été accusé de ces délits lors de l'enquête?

M. Hogarth: Oui, mais dans une certaine mesure très limitée.

M. Christie: Dans quelle mesure ce cas affecte-t-il l'autre?

M. Hogarth: Prenons l'exemple que j'ai mentionné plus tôt. A première vue, il s'agit de connaissance charnelle, et même au cours de l'enquête préliminaire on indique qu'il s'agit peut-être d'un viol. Mais supposons que lors de l'enquête préliminaire vous n'indiquez pas que la plaignante et l'accusé n'étaient pas mariés, de façon qu'en réalité il ne soit pas complètement question de viol lors de l'enquête préliminaire. A mon avis, le procureur de la Couronne devrait pouvoir choisir librement une accusation de viol en cour supérieure; et évidemment, fournir en cour supérieure la preuve qu'ils ne sont pas mariés. Cette situation se présente de nombreuses façons, où le délit exact que vous voulez invoquer en cour supérieure n'est pas compris dans le témoignage à l'enquête préliminaire. Cette preuve n'est évidente que si l'on appelle un autre témoin pour l'établir. A mon avis, le procureur de la Couronne devrait, comme nous l'avons toujours fait, être libre d'intenter l'action lui-même plutôt que de devoir la référer au procureur général.

M. Christie: Vous dites qu'il y a plusieurs façons, mais les renseignements prouvent que ces soi-disant actes d'accusations sont relativement rares.

M. Hogarth: Je ne crois pas qu'elles soient tellement rares. Ça me rappelle la fameuse affaire Sommers où il y en avait trois.

[Texte]

Mr. Turner (Ottawa-Carleton): It is a rare situation.

Mr. Hogarth: No, I think I can assure you that this is not a rare case. I have preferred several myself. Another great thing is that a preferred indictment negates any problems you might have if the warrant of committal is defective. You do not have to worry about there being a preliminary hearing. You can just prefer a direct indictment and not be concerned about the preliminary hearing. I am sure many prosecutors on the Coast would bear me out.

The Chairman: Gentlemen, we have before us an amendment by Mr. MacGuigan.

Mr. MacGuigan: I move that Bill C-150 be amended by striking out lines 5 to 9 on page 62 and substituting the following:

45. Subsection (2) of section 489 of the said Act is repealed and the following substituted therefor:

“(2) An indictment under subsection (1) may be preferred by the Attorney General or his agent, or by any person with the written consent of a judge of the court or of the Attorney General or, in any province to which this section applies, by order of the court.

(3) Notwithstanding anything in this section, where’

It merely omits the words “by the Deputy Attorney General” from that Section.

The Chairman: All in favour of the amendment?

Mr. Hogarth: Mr. Chairman, might we see that amendment and have a look at it over the...

The Chairman: Frankly, Mr. Hogarth, as we have gone this far I would like to see this Clause either passed or rejected.

Mr. McCleave: Do the law officers have any objection to it?

Mr. Hogarth: Well, Mr. Chairman, my problem is that this has been drawn to my attention by senior prosecutors of British Columbia. They are concerned about it and if we are going to move to amend this further I want to have a good look at it, because I do not think...

The Chairman: Perhaps Mr. MacGuigan could explain this and it may ease your mind. Mr. MacGuigan?

[Interprétation]

M. Turner (Ottawa-Carleton): Ce cas est assez rare.

M. Hogarth: Non, je puis vous assurer qu'il ne s'agit pas d'un cas rare, j'en ai vu plusieurs moi-même. Un autre aspect d'importance est qu'un acte d'accusation neutralise tout problème que vous pourriez avoir, si le mandat de dépôt comporte des lacunes. Vous n'avez pas à vous inquiéter de ce qu'il n'y ait pas d'enquête préliminaire. Vous n'avez qu'à présenter un acte d'accusation direct, et ne pas vous soucier de l'enquête préliminaire. Je suis sûr que bien des avocats confirmeront mes dires.

Le président: Messieurs, M. MacGuigan propose un amendement.

M. MacGuigan: Je propose, que le bill C-150 soit modifié en retranchant les lignes 5 à 8 à la page 62 et en les remplaçant par ce qui suit:

«45. Le paragraphe (2) de l'article 489 de ladite loi est abrogé et remplacé par ce qui suit:

«(2) Un acte d'accusation prévu par le paragraphe (1) peut être présenté par le procureur général ou son représentant ou par toute personne avec le consentement écrit d'un juge de la cour ou celui du procureur général ou, dans une province à laquelle le présent article s'applique, par ordonnance de la cour.

(3) Nonobstant toute disposition du présent article, lorsque»

On omet ainsi les mots «par le procureur général adjoint» de cet article.

Le président: Tous ceux qui sont en faveur de l'amendement, veuillez bien lever la main.

M. Hogarth: Pourrions-nous voir cet amendement? Pourrions-nous l'étudier?

Le président: Franchement, monsieur Hogarth, nous avons déjà été si loin, que j'aimerais voir cette modification adoptée ou rejetée.

M. McCleave: Les avocats de la Couronne ont-ils une objection à cela?

M. Hogarth: Monsieur le président, mon problème est que ce sujet a été porté à ma connaissance par les principaux procureurs de la Couronne de la Colombie-Britannique. C'est un point qui les touche, et si nous proposons un amendement, j'aimerais l'étudier plus longuement, car je ne crois pas...

Le président: Peut-être que M. MacGuigan peut vous...

[Text]

Mr. MacGuigan: This amendment is simply to take care of an oversight in the drafting of this Bill which, in this Section, does not take account of the changed definition of Attorney General which we have already approved in Clause 2. It is merely to omit the words "by the Deputy Attorney General" from the present legislation.

It is not a change of any consequence, I can assert that. It is a change only to bring Section 489(2) into line with what we have already adopted in Clause 2 of this Bill.

Mr. Hogarth: I see.

Amendment agreed to.

The Chairman: Shall the Clause as amended carry?

Mr. Hogarth: I ask that it stand, Mr. Chairman, until I have had a chance to...

An hon. Member: Is it carried, sir?

Mr. McCleave: I think Mr. Hogarth's amendment should stand. I share the impatience of everybody to get out of here, but I think we had an agreement that if there were four or five who asked that something stand it should stand.

The Chairman: The agreement was that if seven or more members wanted a clause to stand, that clause would stand. Now, if it is the feeling of the Committee that this is a very important point and should be stood I would like to have an indication.

Mr. Hogarth: Well, Mr. Chairman, let it go as it is and with the leave with the Committee I will bring it up again if I have something more to add.

Clause 45 as amended agreed to.

The Chairman: The meeting is adjourned until Wednesday, at 3.30 p.m.

[Interpretation]

M. MacGuigan: Cet amendement propose simplement la réparation d'un oubli dans la rédaction de ce projet de loi qui, dans cet article, ne tient pas compte du changement de la définition d'un procureur général que nous avons déjà approuvée dans l'article 2. Cette modification veut simplement faire rayer les mots «par le procureur général adjoint» de la présente loi.

Ce n'est pas un changement qui porte à conséquence, je peux vous affirmer cela. C'est un changement qui ramène l'article 489 (2) dans les limites que nous avons déjà adoptées dans l'article 2 de ce projet de loi.

M. Hogarth: Je vois.

Modification adoptée.

Le président: L'article modifié est-il adopté?

M. Hogarth: J'ai demandé qu'il soit réservé, monsieur le président, jusqu'à ce que j'aie la chance de...

Une voix: Est-il adopté?

M. McCleave: Je pense que la modification de M. Hogarth doit être réservée. Je partage l'impatience de tout le monde ici présent d'en finir, mais je crois que nous avons un accord que si quatre ou cinq d'entre nous demandent que quelque chose soit réservé, cette chose-là doit être réservée.

Le président: L'accord était qu'il fallait sept députés ou plus pour réserver un article. Maintenant, si c'est l'intention du Comité que ce point très important soit réservé, j'aimerais en avoir une indication.

M. Hogarth: Monsieur le président, laissez-le donc aller tel qu'il est et je reviendrai sur ce point si j'ai quelque chose à ajouter plus tard.

L'article 45 modifié, adopté.

Le président: Le Comité s'ajourne jusqu'à mercredi, à 3 heures 30 de l'après-midi.

OFFICIAL BILINGUAL ISSUE

HOUSE OF COMMONS

First Session

Twenty-eighth Parliament, 1968-69

FASCICULE BILINGUE OFFICIEL

CHAMBRE DES COMMUNES

Première session de la

vingt-huitième législature, 1968-1969

STANDING COMMITTEE

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DE LA

JUSTICE AND LEGAL AFFAIRS

JUSTICE ET DES QUESTIONS
JURIDIQUES

Chairman

Mr. Donald R. Tolmie

Président

MINUTES OF PROCEEDINGS
AND EVIDENCE

PROCÈS-VERBAUX ET
TÉMOIGNAGES

No. 15

WEDNESDAY, MARCH 26, 1969

LE MERCREDI 26 MARS 1969

Respecting

BILL C-150,

Criminal Law Amendment Act, 1968.

Concernant le

BILL C-150,

Loi de 1968 modifiant le droit pénal.

Appearing

Minister of Justice and
Attorney General of Canada.

Hon. John N. Turner

Solicitor General of Canada. Hon. George J. McIlraith

Ont comparu

Ministre de la Justice et
Procureur général du Canada.

Solliciteur général du Canada.

WITNESSES—TÉMOINS

(*See Minutes of Proceedings*)

(*Voir Procès-verbal*)

The Queen's Printer, Ottawa, 1969
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STANDING COMMITTEE ON
JUSTICE AND LEGAL
AFFAIRS

Chairman
Vice-Chairman

M. Donald Tolmie
M. André Ouellet

and Messrs.
et Messieurs

Alexander,
Cantin,
¹ Cullen,
Deakon,
Gervais,
² Gibson,

Gilbert,
Hogarth,
MacEwan,
MacGuigan,
Marceau,
Mather,

COMITÉ PERMANENT
DE LA JUSTICE ET DES
QUESTIONS JURIDIQUES

Président
Vice-président

McCleave,
McQuaid,
Murphy,
Rondeau,
Valade,
Woolliams—(20).

(Quorum 11)

Le secrétaire du Comité
ROBERT V. VIRR
Clerk of the Committee

Pursuant to S.O. 65(4) (b)

¹ Replaced Mr. Chappell on March 26

² Replaced Mr. Blair on March 26

¹ Remplace M. Chappell le 26 mars

² Remplace M. Blair le 26 mars

[Text]

MINUTES OF PROCEEDINGS

WEDNESDAY, March 26, 1969
(20)

The Standing Committee on Justice and Legal Affairs met this day at 3.47 p.m., the Chairman, Mr. Tolmie, presiding.

Members present: Messrs. Alexander, Cantin, Cullen, Deakon, Gervais, Gibson, Gilbert, Hogarth, MacEwan, MacGuigan, Marceau, Mather, McCleave, Murphy, Ouellet, Tolmie, Valade, Woolliams—(18).

Attending: Hon. John N. Turner, Minister of Justice and Attorney General of Canada; Hon. George J. McIlraith, Solicitor General of Canada.

Witnesses: From the National Parole Board: Mr. T. G. Street, Q.C., Chairman; Mr. L. L. England, Solicitor.

The Committee resumed consideration of Bill C-150.

On a point of order, Mr. Valade stated that clause 7 had been carried in his absence although he had an outstanding motion relating to that clause.

The Chairman ruled that Mr. Valade did not have a point of order because Mr. Woolliams had moved an amendment, identical in substance, in Mr. Valade's name.

Mr. Valade commented on the interpretation from English (Issue No. 8, page 242) into French which resulted in an opposite meaning in the French language.

The Chair ruled that the "Minutes of Proceedings" rather than the "Evidence" reflected the official report, whether expressed in English or in French.

The Committee resumed clause by clause consideration of Bill C-150.

Clauses 47, 48, 55, 56, 60, 63, 64 and 65 were carried.

[Traduction]

PROCÈS-VERBAL

Le MERCREDI 26 mars 1969.
(20)

Le Comité permanent de la justice et des questions juridiques se réunit à 15h.47 cet après-midi, sous la présidence de M. Tolmie.

Présents: MM. Alexander, Cantin, Cullen, Deakon, Gervais, Gibson, Gilbert, Hogarth, MacEwan, MacGuigan, Marceau, Mather, McCleave, Murphy, Ouellet, Tolmie, Valade, Woolliams (18).

Aussi présents: L'honorable John N. Turner, ministre de la Justice et Procureur général du Canada; et l'honorable George J. McIlraith, Solliciteur général du Canada.

Témoins: de la Commission nationale des libérations conditionnelles: MM. T. G. Street, C.R., président; L. L. England, solliciteur.

Le Comité reprend l'étude du Bill C-150.

M. Valade en appelle au Règlement et déclare que l'article 7 a été adopté en son absence bien qu'il ait signalé son intention de proposer un amendement à cet article.

Le président rejette l'appel au règlement de M. Valade parce que M. Woolliams a, au nom de M. Valade, présenté un amendement identique quant au fond.

M. Valade fait un commentaire sur l'interprétation de l'anglais (Fascicule n° 8, page 242) au français dont il est résulté un contresens dans le texte français.

Le président décide que le texte français ou anglais du «Procès-verbal», et non pas les «Témoignages», représente le compte rendu officiel.

Le Comité reprend l'étude article par article du Bill C-150.

Les articles 47, 48, 55, 56, 60, 63, 64 et 65 sont adoptés.

[Text]

On clause 75, Mr. Cantin moved,

That clause 75 of the French version of Bill C-150 be amended

(a) by striking out the words "libération conditionnelle" wherever they appear therein and substituting therefor the word "probation";

(Note: these words appear at:

page 81, in the heading and in lines 28, 36 and 37, 40;

page 82, in lines 5 and 6, 41 and 42;

page 83, in lines 2, 11 and 12, 23 and 24, 35 and 36, 40;

page 84, in lines 20 and 21, 23, 30 and 31;

page 85, in lines 3 and 4, 8 and 9, 24, 39 and 40;

page 86, in lines 20, 21 and 22, 30 and 31.)

and

(b) by striking out the words "agent de surveillance" wherever they appear therein and substituting therefore the words "agent de probation".

(Note: These words appear at:

page 81, in line 4;

page 82, in lines 9 and 10, 26 and 27.)

Motion carried; Clause 75, as amended, carried.

Mr. Cantin moved,

That Form 44 of clause 93 of the French version of Bill C-150 be amended by striking out lines 20 and 21 of page 99 and substituting the following:

"Ordonnance de probation".

Form 44 of clause 93, as amended, carried.

Clause 93, as amended, carried.

Clause 94 was permitted to stand.

Clauses 95 to 100 inclusive were carried.

On clause 101, Mr. Hogarth moved,

That sub-clause (1) of clause 101 of Bill C-150 be amended by striking out line

[Traduction]

Relatif à l'article 75, M. Cantin propose, que l'article 75 de la version française du Bill C-150 soit modifié

a) par le retranchement, partout où ils apparaissent, des mots «libération conditionnelle» et leur remplacement par le mot «probation»;

(Nota: Ces mots apparaissent aux pages:

81, dans la rubrique et aux lignes 28, 36 et 37, 40;

82, aux lignes 5 et 6, 41 et 42;

83, aux lignes 2, 11 et 12, 23 et 24, 35 et 36, 40;

84, aux lignes 20 et 21, 23, 30 et 31;

85, aux lignes 3 et 4, 8 et 9, 24, 39 et 40;

86, aux lignes 20, 21 et 22, 30 et 31.)

et

b) par le retranchement, partout où ils apparaissent, des mots «agent de surveillance» et leur remplacement par les mots «agent de probation».

(Nota: Ces mots apparaissent aux pages:

81, à la ligne 4;

82, aux lignes 9 et 10, 26 et 27.)

La proposition est adoptée; l'article 75 modifié est adopté.

M. Cantin propose,

que la Formule 44 de la version française du Bill C-150 soit modifiée par le retranchement des lignes 20 et 21 de la page 99 et leur remplacement par:

«Ordonnance de probation».

La Formule 44 de l'article 93 modifié est adoptée.

L'article 93 modifié est adopté.

L'article 94 est réservé.

Les articles 95 à 100 inclusivement sont adoptés.

Relatif à l'article 101, M. Hogarth propose,

que le Bill C-150 soit modifié par le retranchement de la ligne 26, page 109, et

[Text]

20 on page 109 thereof and substituting the following:

“warrant in writing,”

Motion carried and clause 101, as amended, carried.

Clauses 102 and 103 were carried.

On clause 104, Mr. Hogarth moved,

That clause 104 of Bill C-150 be amended by striking out line 26 on page 112 thereof and substituting the following:

“the apprehension of an”

Motion carried and clause 104, as amended, carried.

Clauses 105 and 106 were carried.

On clause 107, Mr. Hogarth moved,

That clause 107 of Bill C-150 be amended as follows:

(a) by striking out lines 2 and 3 on page 115 and substituting the following:

“credited with statutory remission, is convicted in dis—”;

and

(b) by striking out line 19 on page 115 and substituting the following:

“mitted.

(5) Statutory remission credited pursuant to this section to a person who is sentenced or committed to penitentiary for a fixed term shall be reduced by the maximum amount of satisfactory remission with which that person was at any time credited under the *Prisons and Reformatories Act* in respect of a term of imprisonment that he was serving at the time he was so sentenced or committed.”

Motion carried and clause 107, as amended, carried.

[Traduction]

son remplacement par:

«mandat écrit, autoriser»

La proposition est adoptée et l'article 101 modifié est adopté.

Les articles 102 et 103 sont adoptés.

Relatif à l'article 104, M. Hogarth propose,

que l'article 104 du Bill C-150 soit modifié par le retranchement de la ligne 27, page 112, et son remplacement par:

«d'un détenu dont»

La proposition est adoptée et l'article 104 modifié est adopté.

Les articles 105 et 106 sont adoptés.

Relatif à l'article 107, M. Hogarth propose,

que l'article 107 du Bill C-150 soit modifié comme suit:

a) par le retranchement des lignes 2 et 3, à la page 115, et leur remplacement par ce qui suit:

«—ficié d'une réduction statutaire de peine, est»;

et

b) par le retranchement de la ligne 23, à la page 115, et son remplacement par ce qui suit:

«moment où l'infraction a été commise.

5) La réduction statutaire de peine accordée conformément au présent article à une personne qui est condamnée ou envoyée dans un pénitencier pour une période fixée doit être diminuée de la réduction statutaire de peine maximum dont a bénéficié à un moment quelconque cette personne en vertu de la *Loi sur les prisons et les maisons de correction* pour une peine d'emprisonnement qu'elle purgeait au moment où elle a été condamnée ou envoyée dans un pénitencier.»

La proposition est adoptée et l'article 107 modifié est adopté.

[Text]

Clause 108 carried.

On clause 109, Mr. Deakon moved.

That sub-clause (1) of clause 109 of Bill C-150 be amended by striking out lines 13 and 14 on page 117 thereof and substituting the following:

“quarter of the fixed term for which he has been sentenced or committed as time off subject to”

Motion carried.

On clause 109, Mr. Hogarth moved,

That sub-clause (2) of clause 109 of Bill C-150 be amended by striking out line 12 on page 119 thereof and substituting the following:

“one-quarter of the portion of the fixed term to which he was sentenced that is”

Motion carried and clause 109, as amended, carried.

Clauses 110 to 115 were carried.

On clause 94, Mr. McCleave moved that the word “criminal” on line 15 on page 101 be deleted.

After debate thereon, the motion was negatived.

Clause 94 carried.

At 5.42 p.m., the Committee adjourned until 9.30 a.m. March 27, 1969.

[Traduction]

L'article 108 est adopté.

Relatif à l'article 109, M. Deakon propose,

que le paragraphe 1) de l'article 109 du Bill C-150 soit modifié par le retranchement de la ligne 14, page 117 et son remplacement par:

«période fixée à laquelle a été condamnée ou pour laquelle elle a été incarcérée.»

La proposition est adoptée.

Relatif à l'article 109, M. Hogarth propose,

que le paragraphe (2) de l'article 109 du Bill C-150 soit modifié par le retranchement de la ligne 12, page 119, et son remplacement par ce qui suit:

«partie de la période fixe à laquelle il a été condamné lui restant alors à»

La proposition est adoptée et l'article 109 modifié est adopté.

Les articles 110 à 115 sont adoptés.

Relatif à l'article 94, M. McCleave propose qu'on retranche les mots «en matière pénale» à la ligne 19 de la page 101.

Après discussion, la proposition est rejetée.

L'article 94 est adopté.

A 17h.42, le Comité s'ajourne jusqu'à 9h.30 le 27 mars 1969.

*Le secrétaire du Comité,
R. V. VIRR,
Clerk of the Committee.*

[Texte]

EVIDENCE

(Recorded by Electronic Apparatus)

Wednesday, March 26, 1969.

• 1547

The Chairman: Gentlemen, we have a quorum.

Mr. Valade: Mr. Chairman, may I raise a point of order?

The Chairman: Yes, Mr. Valade.

Mr. Valade: Do I understand that yesterday the Committee adopted or voted on Clause 7.

The Chairman: Yes, you are correct.

Mr. Valade: Mr. Chairman, my point of order then becomes maybe a question of privilege, because yesterday I was supposed to attend this committee and I was asked to go to the House. I was supposed to speak yesterday afternoon and I was not aware that we were going to study this section. There was no indication yesterday morning that this would be done yesterday afternoon, so I was absent. And I was surprised to learn that the vote had been taken on this article because I could not refer to the minutes of yesterday's meeting to see what procedure was being followed. If it was done without the minutes I cannot, but I am asking your opinion. Before the vote was taken, was the decision taken on my amendment which I submitted to this Committee on March 6, 1969? I refer to the Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs, No. 8, on page 198. If you want to refer to this section, Mr. Chairman, I moved, and I will read from the report.

...that Section 149A of Bill C-150 be deleted...

Later it was corrected that this was referring to Clause 7. Mr. Chairman, later on in the discussions you mentioned on page 200 of the same report, and I quote from page 200 on the left-hand side under the name "The Chairman"—I do not have the lines, but I will quote from the last three sentences:

...and no final decision will be made on the clause anyway until the steering committee meets at 12 o'clock.

[Interprétation]

TÉMOIGNAGES

(Enregistrement électronique)

Mercredi 26 mars 1969

Le président: Messieurs, nous avons quorum.

M. Valade: J'invoque le règlement, monsieur le président?

Le président: Oui, monsieur Valade.

M. Valade: Le Comité a-t-il adopté l'article 7, hier, monsieur le président?

Le président: Oui, c'est exact.

M. Valade: En ce cas, monsieur le président, mon point de règlement est peut-être une question de privilège. Hier, je devais assister à la séance de ce Comité, mais j'ai dû aller à la Chambre. J'étais censé parler hier après-midi et j'ignorais que nous allions examiner cet article. Personne ne nous avait dit hier que ceci allait être fait hier après-midi, j'étais donc absent.

J'ai été étonné de voir que le vote avait été pris sur cet article, car je n'ai pas pu consulter le procès-verbal d'hier pour voir comment cela s'était passé ici. S'il n'y a pas eu de procès-verbal je ne peux pas savoir ce qui se passe, mais je demande votre avis. Avant la mise aux voix, est-ce qu'une décision a été prise sur l'amendement dont j'avais saisi le Comité le 6 mars 1969? Je cite ici le compte rendu des témoignages du Comité sur la Justice et les questions juridiques, n° 8, Page 198. Si vous voulez vous reporter à cet article, monsieur le président, j'ai proposé alors et je cite:

...que l'article 149A du bill C-150 soit supprimé.

On a ensuite corrigé, il s'agissait de l'article 7. Plus tard, monsieur le président, au cours du débat, vous avez fait mention, ainsi qu'en fait foi la page 200 du même procès-verbal et je cite ici la page 200, à droite sous la rubrique LE PRÉSIDENT, je n'ai pas les numéros des lignes ici, mais voici les trois dernières:

et l'on ne prendra de toute façon aucune décision finale sur l'article avant la réunion du comité de direction qui aura lieu à midi.

[Text]

I refer to the same report later on that day. You, Mr. Chairman, on page 203 said, and I quote from page 203, on the left-hand side:

...I think what we will do at this time is stand Clause 7, if the Committee agrees, and also stand the motion before the Committee. We will have our steering committee meeting at noon and then we can proceed at 3.30 p.m. In the meantime, I would suggest, ... we call Clause 8...

• 1550

I have been referring to the accounts of proceedings, Mr. Chairman, and at no point was any decision or vote taken on my amendment. Therefore, in the circumstances, the vote taken yesterday is quite irregular, is not in accordance with the rules and should not be accepted, because it does not dispose of this amendment first.

The Chairman: Mr. Valade, in the first place, my best recollection is that it was mentioned that we would be proceeding with Clause 7 in the afternoon.

Mr. Woolliams put forward an amendment that I understood was in actuality your amendment; that it was the same amendment in substance, and would serve the same purpose.

I therefore entertained that amendment, and I feel, as I state, that your actual amendment was before the Committee, except that was brought forth by Mr. Woolliams. I do not think, Mr. Valade, that you have been prejudiced. Your point of view has been brought before the Committee. Though, you did not do it yourself it was done by your colleague, Mr. Woolliams.

Mr. Valade: Mr. Chairman, on that point, I am sorry I must disagree with you. At no time did the amendment covered by Mr. Woolliams directly concern my amendment, which was to delete the article; and there was a formal motion to do this.

The Chairman: Mr. Valade, this was the actual motion.

Mr. Woolliams: The wording was identical. I did tell you ahead of time, when Mr. Valade was not here and we had an adjournment, that, with the greatest respect, it was Mr. Valade's amendment.

[Interpretation]

Je reviens encore une fois au même procès-verbal, plus tard, le même jour. Vous-même, monsieur le président, à la page 203, disiez; et je vous cite à la page 203;

...Je pense que ce que nous allons faire à ce stade, si le Comité est d'accord, c'est réserver l'article 7, ainsi que la motion présentée au Comité. La réunion du comité directeur aura lieu à midi, et nous reprendrons nos travaux à 3h30. Entre-temps je propose que nous mettions en délibération l'article 8...

Je me suis reporté au compte rendu des délibérations, monsieur le président, et à aucun endroit n'ai-je pu trouver qu'une décision ou un vote ait été pris au sujet de mon amendement. Cela veut dire que dans les circonstances le vote d'hier est tout à fait irrégulier et n'est pas conforme au règlement. Il ne devrait pas être accepté parce qu'on n'a pas d'abord disposé de cette procédure d'amendement.

Le président: D'abord M. Valade, autant que je me souviens, nous avions dit que nous allions aborder dans l'après-midi l'article 7. M. Woolliams a proposé un amendement qui à ma connaissance était le vôtre. C'était exactement le même que le vôtre en substance et il avait le même objectif.

J'ai donc reçu cette proposition d'amendement. Dans ces conditions, comme je le dis, votre proposition d'amendement a été mise en discussion à ceci près que ce n'était pas vous qui l'avez mise en discussion, mais M. Woolliams. Je ne pense pas, monsieur Valade, que vous ayez souffert de préjudice. Votre point de vue a été présenté au Comité, sauf qu'il ne l'a pas été par vous, mais par votre collègue M. Woolliams.

M. Valade: Monsieur le président, sur ce point je regrette d'être en désaccord avec vous. L'amendement présenté par M. Woolliams n'avait rien de commun, en aucun moment, avec mon amendement qui demandait la suppression de l'article, et il n'y a pas eu de motion officielle à cet effet.

Le président: C'était précisément la motion.

M. Woolliams: Le libellé était identique et je vous ai effectivement dit à l'avance, en toute déférence, que je vous présentais la motion de M. Valade pendant son absence. Je tiens à ce que le Comité comprenne. Le

[Texte]

I want it understood by the Committee—and I think the Committee realized that it was Mr. Valade's amendment. He was tied up in the House yesterday on a debate. I am sorry I did not know that myself, but he was tied up in the debate, and his amendment was actually put to the meeting. I apologized to Mr. Valade last night, that I did not get hold of him, but we were moving along fairly quickly. That is the situation. But the amendment was put, I must say that. The words you will find are identical.

The Chairman: Thank you, Mr. Woolliams.

Mr. Valade: Mr. Chairman, on the point, I think the Committee has to proceed in an orderly way and use the same procedure that is used in the House of Commons. The rules of Beauchesne are very specific that the procedure of all committees should be along the same lines as that used in the House of Commons.

I do not know how it can be explained that one amendment can kill another amendment before it is disposed of by the Committee. The motion is there, and if the Committee will refer to Issue No. 8 at page 1 of the reports it is very specifically stated:

Moved by Mr. Valade, that clause 7 of Bill C-150 be deleted...

And the report goes on:

... after discussion, and with the consent of the Committee, the motion was permitted to stand.

Now, there is nothing in the record that can correct that until, or unless, the Committee vote on it.

The Chairman: Mr. Valade, I think you are being very technical. I understand your position. The clause was stood. It was brought to the attention of the Committee that we would be dealing with that clause in the afternoon.

The actual amendment which you had proposed was put forward by Mr. Woolliams, and I assumed that in substance this was your amendment. I do not see, under any circumstances, that you have been prejudiced. You certainly are not in the position of having a valid amendment put by you disallowed by the Chair. The actual amendment was placed before the Committee, though not by yourself, and it was voted upon.

Mr. Valade: I beg your pardon, Mr. Chairman, it was put by me personally.

[Interprétation]

Comité s'est rendu compte, je crois, qu'il s'agissait de la proposition d'amendement de M. Valade. Il était retenu à la Chambre, hier, par un débat, et son projet d'amendement a effectivement été présenté à la séance. Son amendement a été placé en discussion. Je me suis excusé auprès de M. Valade hier soir de ne pas avoir communiqué avec lui, mais nous procédions assez rapidement. Voilà la situation. Néanmoins, la proposition d'amendement a été faite et les mots que vous verrez sont exactement les mêmes que ceux de M. Valade.

Le président: Merci, monsieur Woolliams.

M. Valade: Sur ce point, il faut que le Comité procède de la même façon qu'à la Chambre. Les règlements de Beauchesne sont très précis à cet égard, c'est-à-dire que le Comité doit procéder avec ordre et adopter la même procédure qui a cours à la Chambre des communes. Les règlements de Beauchesne disent très précisément que la procédure de tous les comités doit suivre les mêmes règles qui ont cours à la Chambre des communes. Je ne sais pas comment un amendement peut en remplacer un autre avant que le Comité en ait disposé? A la première page du fascicule 8, dans le rapport, il est très précisément dit que:

M. Valade propose que l'on supprime l'article 7 du Bill C-150.

Et le rapport continue:

Après débat, et avec l'accord du Comité, la motion est réservée.

Rien dans le compte rendu ne nous permet de disposer de cette motion.

Le président: Monsieur Valade je crois que vous vous arrêtez à des détails techniques. Je comprends votre position, nous avons réservé effectivement cet article. Le Comité a été averti que nous allions discuter de cet amendement dans l'après-midi. L'amendement même que vous aviez proposé l'a été par M. Woolliams et j'ai supposé que c'était en substance votre amendement. Je ne vois pas dans les circonstances comment vos intérêts ont pu être compromis. Vous ne pouvez certainement pas dire qu'un amendement valide proposé par vous a été rejeté par le président. L'amendement a été proposé au Comité, bien que par un autre, et il a été mis aux voix.

M. Valade: Je vous demande pardon monsieur le président, c'est moi qui l'ai proposé personnellement.

[Text]

• 1555

[Interpretation]

Mr. Woolliams: Perhaps I could be of assistance here. We could change this. It was identical and exactly as Mr. Valade had it, except for the formal reference at the start to Bill C-150. Perhaps we could correct it to read that it was moved by Mr. Valade.

It was his motion. It was voted on yesterday afternoon, and I pointed that out to you that it was his motion. I did not have a copy of the proceedings. That was on Thursday, March 6, 1969. I had explained to the Minister that I was going to be away, and he told me he also would be absent. I did not know the exact wording. In view of the fact that it was called I had to move fairly quickly.

May I suggest, if everybody agrees, that Mr. Valade's name should appear instead of mine? I think that would remedy the situation.

The Chairman: Does the Committee agree?

Some hon Members: Agreed.

Mr. Valade: I do not want to argue with my colleague, but in order not to disappoint my friends on the left I have to disagree on the procedure. I do not know that the Committee is entitled to change a motion made by a member of this Committee without the consent of the mover.

My aim is not to disrupt, or to delay, this Committee but this is the first time I have heard of a motion brought before the Committee, as it would be in the House in other circumstances, being dealt with other than before going on to other amendments. On this, Mr. Chairman, I think the Committee has acted irregularly, illegally and not in conformity with the rules.

If this is the way committees are going to operate are they going to be blurred in their efficiency and their objectivity. I see some of my friends laughing, but I do know that a member of this Committee has the democratic right to speak his mind, to express his own ideas and to propose, within the rights that he has under the rules and privileges of the House, an amendment and have it treated with respect by the Committee.

That is my point. I do not consider this to be a democratic way of dealing with the work before the Committee. I think we should respect the rules and decency, if nothing else. I object very strongly.

M. Ouellet: Monsieur le président, je pense que notre collègue est en train de faire une tempête dans un verre d'eau. Je sais qu'il a

M. Woolliams: Je pourrais peut-être vous venir en aide ici. Nous pourrions apporter une modification. L'amendement était une répétition identique et exacte de l'amendement de M. Valade à l'exception de la référence officielle du débat au Bill C-150. Peut-être pourrions-nous corriger et inscrire qu'il a été présenté par M. Valade. C'était sa motion. Nous l'avons acceptée hier après-midi. Je vous ai dit à ce moment-là que c'était la motion de M. Valade. Je n'avais pas la copie du compte rendu du jeudi, 6 mars. J'avais expliqué au ministre que j'allais être absent; le ministre m'avait dit qu'il allait être absent lui-même, j'ignorais les mots exacts, mais puisque l'article devait être mis aux voix, j'ai dû agir assez rapidement. Ainsi donc au lieu de mettre mon nom, nous pourrions remplacer mon nom par celui de M. Valade.

Le président: Nous sommes d'accord?

Des voix: D'accord.

M. Valade: Je ne veux pas me disputer avec mon collègue, M. Woolliams, mais je ne veux pas décevoir mes amis à gauche, je dois m'inscrire en faux contre la procédure suivie. Je ne sais pas si le Comité a le droit de changer une motion présentée par un membre du Comité sans consentement du proposant. Je ne voudrais pas retarder les travaux du Comité, mais c'est la première fois que j'entends dire qu'une motion dont a été saisi un Comité régulièrement, comme cela sera fait à la Chambre dans d'autres circonstances, ne doit pas être réglée avant que nous passions à autre chose. J'ai l'impression que le Comité a agi irrégulièrement et illégalement et contrairement au règlement.

Si c'est ainsi que les comités fonctionnent, l'efficacité et l'objectivité des comités vont se trouver compromises. Je vois certains de mes collègues qui rient mais je sais qu'un membre du présent comité a le droit démocratique d'exprimer ses idées personnelles et de proposer un amendement, conformément à ses droits, en vertu des droits et privilèges, et d'exiger du Comité que son amendement soit respecté.

Je ne pense pas que ce soit une façon démocratique de traiter des travaux du comité. Il me semble que nous devrions respecter le règlement, les convenances à tout le moins. Je m'oppose violemment à la façon dont on a procédé.

Mr. Ouellet: Mr. Chairman, I think our colleague is raising a tempest in a teapot. I know that he was absent from yesterday aft-

[Texte]

manqué la réunion d'hier après-midi et je comprends qu'il puisse être désappointé de la tournure des événements. Mais, je voudrais simplement lui rappeler que, d'une part, il aura l'occasion de présenter de nouveau son amendement en Chambre lors de la présentation du rapport, et deuxièmement, je pense que le vote d'hier après-midi était très significatif sur la non-recevabilité de son amendement. Je pense bien que le vote a été assez concluant pour lui permettre de voir que même s'il avait été ici pour présenter son amendement, ou même s'il le présentait aujourd'hui, il n'aurait pas plus de succès.

M. Valade: Monsieur le président, je trouve tout à fait surprenant l'argument que vient d'apporter le député Ouellet qui, avec ses qualifications d'homme de loi, devrait vraiment donner une autre interprétation que celle-là aux règles du jeu. Je ne suis pas avocat, mais il y a quand même des règlements qui existent. Ce n'est pas le fait que l'amendement ait été battu ou n'ait pas été battu, ce n'est pas le fait que ce soit refusé aujourd'hui, ou que ce l'ait été hier, ou que ce le sera demain; il existe des règles du jeu qui stipulent que lorsqu'un amendement est déposé à un comité, comme un amendement déposé à la Chambre, on doit d'abord disposer de cet amendement avant d'en accepter d'autres.

Le Comité a outrepassé ces droits et a causé un préjudice à un membre d'un Comité de la Chambre en ignorant un amendement qui avait été déposé au Comité.

The Chairman: I will hear one other member and then I will make my ruling. Mr. Alexander?

Mr. Alexander: I am certainly very much in sympathy with Mr. Valade's comments. It is unfortunate. But, in all fairness, I think no harm has been done, inasmuch as the same motion he had proposed has been dealt with. It is unfortunate perhaps that we did not say that we were bringing it on behalf of Mr. Valade, and I think the point is well taken.

• 1600

I think the Chairman has to be extremely careful in the future as to similar circumstances, and although we happen to be on all fours with his motion at this particular time I think if we were not on all fours that this Committee would then find itself in trouble. Although I am very, very sympathetic with what Mr. Valade has stated, I think the point has been well taken that as far as procedure is concerned we have to be extremely careful because, as I have stated—and I hate to be

[Interprétation]

ernoon's sitting, and I understand that he may be disappointed at the turn of events. But I would simply wish to remind him that, on the one hand, he will have a further opportunity to put an amendment forward in the House when the report is presented, and secondly, I think that the vote yesterday afternoon was a very significant one in it clearly indicated that his amendment is not acceptable. I think the vote was conclusive enough to allow him to note that even if he had been here to present his amendment, or even if he were to present it today, he would have no more success with it.

Mr. Valade: Mr. Chairman, I find rather surprising the argument just made by Mr. Ouellet who with his qualifications as a lawyer should, I think, interpret the rules of the game in another way. I am not a lawyer, but I do know that there are rules that exist. It is not the fact that the amendment was lost or not lost, it is not the fact that my amendment was defeated yesterday or today, or will be turned down tomorrow; the fact is that there are rules of the game stipulating that if there is an amendment before the Committee, as in the case of an amendment before the House, it should first be disposed of before another is entertained.

The Committee has gone beyond its rights and has caused prejudice to a member of a Committee of the House by ignoring an amendment which was put before it.

Le président: Je donne la parole à un autre membre du Comité et je rendrai ensuite ma décision.

M. Alexander: J'ai beaucoup de sympathie pour M. Valade, mais en toute justice, je ne crois pas qu'il y a eu préjudice. La motion qu'il avait l'intention de présenter a fait l'objet d'un vote et c'est bien dommage qu'elle n'ait pas été présentée sous le nom de M. Valade.

Le Président doit prendre grand soin, à l'avenir, dans des circonstances semblables. Nous étions d'accord cette fois-ci, mais si nous ne l'avions pas été, le comité se trouverait dans une impasse. Je suis bien d'accord avec M. Valade, mais on a bien fait comprendre qu'en matière de procédure, il faut faire très attention. Si la motion de M. Woolliams n'avait pas été exactement conforme à celle de M. Valade, nous aurions eu des difficultés. Monsieur Valade s'est exprimé clairement. Je

[Text]

repetitious—if this motion that was brought by Mr. Woolliams was not on all fours with his motion we would be in trouble. I know that Mr. Valade has expressed himself adequately. I think the point has been well taken by the Chairman and by the other members and I think we will have to be very cautious in the future as to what is happening with respect to the procedure that we have to undertake here, and I hope that Mr. Valade will accept that this reasoning is reasonable enough to overcome any difficulties that he has. I think he is more concerned with the procedure than with the actual motion. I hope that his points have been well taken. I think this is the point he was trying to make.

The Chairman: Thank you very much, Mr. Alexander. Mr. Valade.

Mr. Valade: I accept the philosophy and the goodwill which my friend Mr. Alexander has put forward, but there are still some commitments that you as Chairman have given to this Committee, Mr. Chairman, and it is a responsibility which cannot easily be discharged with respect to members of committees and members of the House. One of these commitments was that we would not discuss Clause 7 and the clause dealing with abortion until we had received the Minutes of Proceedings and Evidence of the Committee. I have not received issue No. 11 containing yesterday's proceedings and I am in a position where I have to accept some opinions which although they may be the fact, I think the members of the Committee should be treated in a more legal and a more respectful fashion.

I can do nothing more than protest energetically, but I must say I do not accept the way that we are handling this amendment. It is on record that I had an amendment I wished to make and I recognize the fact that my friend Mr. Woolliams put the same kind of motion, but technically this amendment was under my name and it was not disposed of under my name. Also, we were not told yesterday afternoon that we would discuss this clause today. I make these reservations and I protest about this. I do not accept the fact that we should deal with these very important procedural aspects so lightly.

The Chairman: Mr. MacGuigan.

Mr. MacGuigan: Mr. Chairman, I would like to raise the question of how this problem can best be solved. I quite agree with the theoretical weight of the case that Mr. Valade has made, but along the lines of Mr. Alexander's comments I think we ought to consider

[Interpretation]

crois toutefois que le Président et les autres membres du comité comprennent assez bien ce qui s'est passé et que nous devons faire plus attention à l'avenir quant à la façon de procéder. J'espère que M. Valade acceptera ce raisonnement sage, qui permettra de résoudre son problème. Il s'agit d'une question de procédure et non pas de la motion comme telle. Je crois qu'on a bien compris les observations de M. Valade.

Le président: Je vous remercie beaucoup, M. Alexander. Monsieur Valade?

M. Valade: J'accepte les principes et la bonne volonté exposés par mon collègue, M. Alexander. Il y a tout de même des devoirs que vous, monsieur le président, avez donnés au comité. Il s'agit d'une responsabilité dont nous ne pouvons pas nous défaire aussi facilement vis-à-vis les membres de ce comité et de la chambre. Nous avons convenu de ne pas discuter de l'article 7 et de l'autre article qui porte sur l'avortement avant de recevoir le procès-verbal du Comité. Je n'ai pas reçu le procès-verbal numéro 11, qui porte sur les délibérations d'hier, et je dois accepter certains points de vue, quoique je crois que les honorables députés devraient être traités d'une façon plus respectable et conforme aux règlements.

Tout ce que je puis faire, c'est protester de façon énergique, mais je n'accepte pas la façon dont nous avons tenté de résoudre la question de cet amendement. C'est un amendement qui n'a pas été réglé. Je reconnais que mon collègue, M. Woolliams, a présenté une motion semblable mais cet amendement était vraiment à mon nom, selon le Règlement. On ne m'avait pas dit que nous discuterions de cet article hier après-midi. Je proteste; je ne veux pas qu'on traite les règlements de procédure à la légère.

Le président: Monsieur MacGuigan.

M. MacGuigan: Monsieur le président, je me demande comment résoudre ce problème. Je suis d'accord avec les théories présentées par M. Valade, mais pour donner suite à ce qu'a dit M. Alexander, je crois qu'il faudrait tenter de réparer l'erreur qui a été commise

[Texte]

how the error that was made can best be undone.

I would appeal to Mr. Valade on this basis. As the substance of the motion was actually dealt with, the only solution to this problem would be if in this particular instance he would withdrawn his objection, while at the same time maintaining his proper concern that we should not get ourselves in a situation again where we fail to consider an amendment which has already been requested.

The Chairman: Mr. McCleave.

Mr. McCleave: Mr. Chairman, there is still the possibility of a vote in the House on this bill. I realize that this is unfortunate, but...

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The Chairman: Just for clarification, Mr. Valade, it is my understanding that at no time did the Chair make any undertaking that we would not proceed with Clause 7 or the abortion clause until we had the Minutes of Proceedings. In addition, I feel that we have adhered to Parliamentary procedure. In many cases in the House motions are moved by colleagues and are accepted as such.

Mr. Valade: With the consent of the members...

The Chairman: Just a moment, please, Mr. Valade. It is my understanding from the remarks today that your motion actually was moved by Mr. Woolliams and the ruling I make is that in substance your motion was made by Mr. Woolliams. I regret if any embarrassment was caused to you and I agree with your contention that we must stick to the Parliamentary rules and do the best we can. I do not think there is any prejudice. I feel that it would be in the interests of the Committee if we were to proceed with the discussions. I suggest we now turn to Clause 47 on page 62.

Mr. Valade: Mr. Chairman, without coming back to this, may I ask a question of you as Chairman? Would the Chair tell us which are to be considered the official reports, for the guidance of this Committee, the English or the French reports?

The Chairman: I am informed, Mr. Valade, it is the Minutes of Proceedings which precede the actual evidence in English.

Mr. Valade: Or the Minutes of Proceedings and Evidence.

The Chairman: Yes.

Mr. Valade: Which are the official ones, for the guidance of this Committee, the English or the French section?

[Interprétation]

et j'en appelle à M. Valade sous ce chef. Vu que nous avons déjà étudié la substance de la motion, la solution, c'est que M. Valade retire l'objection, cette fois-ci, tout en exprimant son souci de ne pas laisser le comité se trouver dans une situation semblable de nouveau, soit de ne pas étudier un amendement qu'on a déjà proposé.

Le président: Monsieur McCleave.

M. McCleave: Messieurs, il y a possibilité d'un vote à la chambre à ce sujet. Ceci est dommage, mais...

Le président: Un éclaircissement, monsieur Valade; j'ai cru comprendre que le président ne s'était jamais engagé à ne pas étudier l'article 7 ou l'article concernant l'avortement, avant d'avoir le procès-verbal. De plus, nous nous en sommes tenus à la procédure parlementaire, les motions, à la Chambre, sont souvent présentées par des collègues et acceptées comme telles.

M. Valade: Si les membres du Comité le permettent...

Le président: Un moment, s'il vous plaît, monsieur Valade. Je crois comprendre, à la suite des commentaires que vous avez faits aujourd'hui, que votre motion a été présentée par M. Woolliams et j'estime que votre motion a été présentée par M. Woolliams. Je suis désolé de vous causer des ennuis et j'admetts qu'il faut nous en tenir aux règlements parlementaires. Je ne crois pas qu'il y ait préjugé. Il serait préférable si le Comité poursuivait ses délibérations. Je crois que nous devrions maintenant passer à l'article 47, à la page 62.

M. Valade: Est-ce que je peux vous poser une question monsieur le président? Est-ce que le président nous dirait ce qui fait foi, l'anglais ou le français? Lesquelles doivent être jugées officielles pour guider le Comité?

Le président: On me dit, monsieur Valade, que c'est le procès-verbal, qui précède les témoignages en langue anglaise.

M. Valade: Ou le procès-verbal et les comptes rendus des témoignages.

Le président: Oui.

M. Valade: Quel texte est officiel pour la direction du comité le texte anglais, ou le texte français?

[Text]

The Chairman: I am not quite sure I understand your point, Mr. Valade.

Mr. Valade: Mr. Chairman, can we use either the French or the English reports for guidance and as a basis of discussion?

The Chairman: Yes, that would be my opinion. There is no reason why you could not.

Mr. Valade: If this is so, Mr. Chairman, I wish to refer you to page 242 of issue No. 8. If you say I can use the French version for guidance, then the motion that was put by Mr. Gilbert on page 242 has made it impossible for the witnesses that were before this Committee to discuss the substance and the philosophical aspect of the abortion bill. I will illustrate what I mean by making the translation. This is what appears in English on page 242:

Mr. Gilbert: I move that:

- (1) a maximum of six expert witnesses would be called;
- (2) their evidence must be pertinent to the technical and legal aspects of the bill rather than philosophical;

I now refer to the French text, which appears on the same line in the next column:

Mr. Gilbert propose que:

- 2) leurs témoignages portent sur les aspects philosophiques;

That motion means that we had the technical right to only question witnesses on the philosophical aspects of the abortion bill, not on the technical aspects. According to the English version we should only discuss the technical aspects of the bill and not the philosophical aspects.

Mr. Hogarth: No one objected when French was being spoken.

Mr. Valade: Mr. Chairman, I would like to know whether I am to use the French version or the English version for the conduct of the deliberations?

The Chairman: Mr. Valade, your position is that you are relying upon the technical translation of the French and you do not understand the substance of the motion that was made before the Committee?

Mr. Valade: No, Mr. Chairman. I asked if I was to rely on the French or the English reports, and you said I could use both. If I use Mr. Gilbert's motion, which was voted on and accepted on page 243, it means that the witnesses should have discussed the philosophical aspects of the bill, period.

[Interpretation]

Le président: Je ne comprends pas très bien.

M. Valade: Est-ce que nous pouvons utiliser des comptes rendus en français et en anglais pour nous guider et éclaircir le débat?

Le président: Oui, il me semble, pourquoi pas?

M. Valade: Dans ce cas, je me réfère au procès-verbal n° 8, à la page 242; si vous dites que je peux utiliser la version française pour éclaircir la discussion, je me reporte à la motion présentée par M. Gilbert à la page 242. Celle-ci a rendu impossible pour le Comité de discuter de la substance et des aspects doctrinaux du bill sur l'avortement. Je traduirai pour illustrer ce point. A la page 242, en anglais, je cite M. Gilbert:

Mr. Gilbert propose que:

- 1) un maximum de six témoins experts soient convoqués;
- 2) leurs témoignages portent sur les aspects techniques et légaux plutôt que sur les aspects théoriques.

Maintenant, voici donc le français qui figure en regard:

Mr. Gilbert moves that:

- (2) their evidence deals with philosophical aspects;

Cela veut dire que nous avons le droit d'interroger le témoin quant à la théorie du Bill sur l'avortement, et non au point de vue technique. Selon la version anglaise, ce serait le contraire.

M. Hogarth: Personne n'a fait objection quand on a parlé en français.

M. Valade: Je veux savoir si je puis me servir de l'anglais ou du français dans les délibérations.

Le président: Vous vous fondez sur la traduction française, mais vous ne comprenez pas la substance de la motion dont était saisi le comité.

M. Valade: Non. Je vous demandais si je pouvais me fonder sur le rapport français comme sur le rapport anglais. Vous avez dit que je pouvais me servir de l'un ou de l'autre. Si je prends la motion de M. Gilbert, qui a été votée et acceptée à la page 243, cela veut dire que les témoins auraient dû parler des aspects théoriques du projet de loi, point.

[Texte]

The Chairman: Mr. Valade, I have checked with the Clerk and I have been informed that what the Clerk actually writes is the official part of the document. Referring to page 8-5, the Clerk informs me that he has written the English version and that is the...

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Mr. Valade: Mr. Chairman, this does not satisfy me. We have the report here and you tell me we have to rely on the English written report of the Clerk of this Committee. We cannot go and check the report with the Clerk of the Committee and read all the pages to find out what the procedure is and how we are going to conduct ourselves. I am referring to the official report of the Standing Committee which says that the witnesses should only deal with the philosophical aspects, period.

Mr. Woolliams: What you are saying, Mr. Valade, is that one says one thing in English and another thing in French. Could we not correct the record if that is true?

The Chairman: Mr. Valade, on page 8-5 the French version is correct and it corresponds with the English version, so I rule that there is no prejudice and that the resolution is accepted in both French and English. Perhaps the Clerk could clarify that for you.

Mr. Valade: I was going to read the procedure in the Clerk's office, Mr. Chairman.

Mr. Ouellet: I suppose the record should be the record taken by the Clerk of the Committee. Obviously the official report should be in the language of the person speaking. The rest of it is a matter of translation. There may be an error made from time to time in translation, but what should guide us is the language used at the time of the meeting by the speaker. In other words, if Mr. Valade speaks in French for a period of time I suppose the official minutes should reflect that he is speaking in French, and then if he switches to English later on during the meeting his testimony in English would also appear in the official reports.

The Chairman: Gentlemen, I hold there is no valid point of order and I would suggest...

Mr. Valade: If there is no valid point of order, Mr. Chairman...

Mr. Hogarth: Did we pass Clause 46?

The Chairman: Yes, we did.

[Interprétation]

Le président: J'ai interrogé la secrétaire. On m'a dit que ce que note le sténographe, c'est la partie officielle du document. Quant à la page 8-5, le secrétaire m'informe qu'il a écrit la version anglaise et que c'est celle-là qui...

M. Valade: Cela ne satisfait pas. Nous avons ici un procès-verbal. Vous me dites qu'il faut nous fonder sur le texte du sténographe en anglais. Nous ne pouvons pas vérifier auprès du secrétaire tout ce qu'il écrit pour voir comment nous devons nous conduire. Je parle ici de comptes rendus officiels du comité permanent, qui dit que les témoins ne devraient se préoccuper que du côté théorique de l'affaire.

M. Woolliams: Ce que vous dites, monsieur Valade, c'est que la version française ne correspond pas à la version anglaise. Pourrions-nous rectifier le dossier, si cela est vrai?

Le président: A la page 8-5, la version française est exacte et correspond avec la version anglaise. Je dis donc qu'il n'y a pas préjudice et que la résolution est acceptée dans les deux langues. Le secrétaire pourra peut-être clarifier cela pour vous.

M. Valade: Monsieur le président, je voulais me rendre au bureau du secrétaire pour y lire les modifications proposées.

M. Ouellet: Je pense que le compte rendu officiel est préparé par le secrétaire. Il est certain que le compte rendu officiel doit être dans la langue originale de la personne qui parle. Le reste est une question de traduction. Il est possible qu'il se produise de temps à autres des erreurs de traduction. Ce qui devrait nous guider, c'est ce qu'a dit l'orateur. En d'autres mots, si M. Valade a parlé en français pendant un temps il me semble que le compte rendu officiel doit être en français. Si M. Valade, plus tard, passe à l'anglais, dans son témoignage, c'est son témoignage en anglais qui fait foi.

Le président: Je décide qu'il n'y aura pas d'appel au Règlement, et je suggère...

M. Valade: Si ce n'est pas un appel au Règlement valable...

M. Hogarth: Avons-nous adopté l'article 46?

Le président: Oui.

[Text]

Mr. Hogarth: That is the one I wanted to come back to. The only observation I have to make is that I think it should be made clear that the other offence is another count in the indictment. Clause 46 presently reads:

...where an accused pleads not guilty of the offence charged but guilty of an included or other offence,...

I suggest it would be more happily worded if it read, "but guilty of an included offence or other offence being a count in the indictment" so that two separate indictments are not involved. This is just a suggestion.

Mr. Christie: That was considered, Mr. Hogarth, but it was concluded that it should be left wide open, and we think there are plenty of safeguards built in because the Crown prosecutor must consent. It is clear he must consent before any other charge can be laid.

Mr. Hogarth: Thank you.

Mr. MacGuigan: My records indicate that yesterday we passed the amendment which I proposed within Clause 45 but did not put Clause 46.

The Chairman: We passed Clause 46, as amended.

—Proposed Section 524(1b) and (2) (a), (b) and (c) agreed to.

Mr. Woolliams: I have just one comment. I am not stopping it from being carried, it has been carried. I checked with the officials of the Department and I find that at one time Alberta had 6 jurors and it has now been raised to 12 jurors at the request of the Attorney General of Alberta. I just wanted to put on record that I had not missed that point, if it should be raised.

Mr. Turner (Ottawa-Carleton): As a matter of fact, I raised it when Mr. Schumacher was here on your behalf, saying that it had been brought forward by the Attorney-General.

Mr. Woolliams: Right. Thank you very much.

[Interpretation]

M. Hogarth: C'était l'article sur lequel je voulais revenir. J'ai tout simplement dit qu'à mon avis on devrait dire que cet autre délit devrait être dans une autre partie de la plainte:

«... lorsqu'un prévenu plaide non coupable pour l'infraction dont il est accusé mais plaide coupable pour une infraction incluse ou pour une autre infraction...»

Je suggère que la rédaction serait plus heureuse si elle se lisait: «mais coupable d'une infraction incluse, ou d'une autre infraction sous le coup de l'accusation.» Ainsi les deux accusations séparées ne sont pas impliquées. Ceci n'est qu'une suggestion.

M. Christie: On a songé à cela, monsieur Hogarth. On a décidé cependant qu'il faudrait laisser cette question en termes assez imprécis, et je pense qu'il y a assez de garde-fous dans la Loi, car le procureur de la couronne doit consentir clairement avant de déposer toute accusation supplémentaire.

M. Hogarth: Merci.

M. MacGuigan: D'après mes notes, je crois que nous avons adopté hier l'article 46?

Le président: Nous avons adopté l'article 46 modifié.

L'article 47(1) relatif à l'article 524 (1b) et (2 a, b et c), est adopté.

M. Woolliams: Une seule observation. J'ai vérifié auprès des fonctionnaires du ministère que l'Alberta avait autrefois un jury de six personnes et il y a maintenant douze jurés, à la requête du procureur général de l'Alberta. Je veux juste que cela soit inscrit au compte rendu.

M. Turner (Ottawa-Carleton): En fait, lorsque M. Schumacher était présent, pour vous remplacer, il a déclaré que le procureur général avait avancé ces faits.

M. Woolliams: Merci beaucoup.

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—Proposed Section 524(5) and (6), Clause 47(2) agreed to.

Clause 48—Proposed Section 527A (1), (2), (3), (4), (5) (a), (b), (c), (d), (e), and (6) agreed to.

Article 47(2), relatif à l'article 524(5) et (6), adopté.

Article 48, relatif à l'article 527A(1), (2), (3), (4), (5)(a), (b), (c), (d), (e), et (6), adopté.

[Texte]

Mr. Hogarth: Mr. Chairman, before we leave the provisions with respect to insanity at trial I would like to ask the Minister if he has any report from the Home Secretary in England on how this is working out in the English practice.

Mr. Turner (Ottawa-Carleton): When the Department was drafting this legislation amending the trial of those who might be insane or in terms of their fitness to stand trial, we wired the Home Office through our High Commissioner in London and we got a teletype back from him which read:

When we put question in reftel to Wilson (Assistant Undersec in Charge of Criminal Dept. (Home Office) he replied that in practice this piece of legislation had broadly achieved its intended aims (as set out in the Third Report (Criminal Procedure—Insanity) of the Criminal Law Revision Cttee of Sep. 1963, Command Paper 2149, on which Act is largely based), and was working well...

Mr. Hogarth: Mr. Minister, why did the Department's policy not extend to giving the accused the same rights under Section 451, at least when he was before a magistrate with powers to act under Part XVI.

Mr. Turner (Ottawa-Carleton): We considered that possibility, Mr. Hogarth. We felt that the matter of fitness to stand trial should come before the judge who has custody over the trial. Both the issue of innocence or guilt before a judge and jury and the issue of fitness to stand trial should be decided by the same man or woman.

Mr. Hogarth: Yes. Of course, the magistrate could dismiss it at the preliminary hearing stage without the accused being confined.

Mr. Turner (Ottawa-Carleton): We do not anticipate any problem there. If the magistrate at the preliminary inquiry were to dismiss the case, there is always the provincial law relating to mentally unfit people which can be applied. There is no gap there. The point I think you were making is why should the issue of fitness to stand trial not be decided at the preliminary inquiry rather than at the main trial.

Mr. Hogarth: No, the issue of whether he is competent to instruct counsel during the

[Interprétation]

M. Hogarth: Monsieur le président, avant de quitter les dispositions concernant l'aliénation mentale au cours du procès, j'aimerais demander au ministre s'il a reçu un rapport du *Home Secretary* à Londres au sujet de la façon dont fonctionne ce système là-bas?

M. Turner (Ottawa-Carleton): Lorsque nous étions en train de rédiger les dispositions relatifs aux procès des gens impropres à subir leur procès pour cause d'aliénation mentale, nous avons envoyé un télégramme au *Homme Office* en Angleterre par l'intermédiaire de notre Haut-Commissaire, et voici le télégramme que nous avons reçu en retour:

Lorsque nous avons posé la question contenue dans le télégramme en question, à M. Wilson (sous-secrétaire adjoint en charge du département criminel, Home Office), il a répondu qu'en pratique, cette loi a dans les grandes lignes atteint le but pour laquelle elle avait été conçue. (Comme rapporté dans le Troisième Rapport (Procédure criminelle—aliénation mentale) du Comité pour la revision du droit criminel de septembre 1963, *Command Paper* 2149, sur lesquels ladite loi est fondée) et qu'elle était jugée satisfaisante...

M. Hogarth: Monsieur le ministre, pourquoi n'a-t-on pas essayé de donner à l'accusé les mêmes droits en vertu de l'article 451, tout au moins dans les cas où l'accusé était devant un magistrat agissant selon les pouvoirs conférés par la Partie XVI.

M. Turner (Ottawa-Carleton): Nous avons envisagé la question. Toutefois, nous pensons que c'est le juge qui a juridiction sur la cause, qui devrait procéder. L'innocence ou la culpabilité, la question du jugement devant le juge, toutes ces choses devraient être décidées par la même personne.

M. Hogarth: Oui bien sûr, le magistrat pourrait déclarer un non-lieu à l'étape de l'enquête préliminaire sans que le prévenu soit emprisonné.

M. Turner (Ottawa-Carleton): Nous ne pensons avoir aucun problème. Si le magistrat, à l'enquête préliminaire, prononçait un non-lieu, il reste tout de même des lois provinciales relatifs aux aliénés mentaux qui pourraient alors s'appliquer. Votre question est celle-ci: pourquoi est-ce qu'on ne remet pas cette décision à l'enquête préliminaire plutôt qu'au procès?

M. Hogarth: Non, mais à savoir si le juge est compétent ou non, pour donner des ins-

[Text]

course of the preliminary hearing. I suggest that if he is a magistrate empowered to act under Part XVI he should have the alternative of hearing what the Crown has to say before he determines if he is fit to have a preliminary hearing.

Mr. Turner: It was a policy decision. We felt that the trial judge ought to have discretion over both matters.

Clause 55—Proposed Section 583(1), (2) and (3) agreed to.

Clause 56—Proposed Section 584(3) agreed to.

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Clause 60—Proposed Section 592(1), (2) and (3) agreed to.

Clause 63—Proposed Section 597(2) agreed to.

Clause 64—Proposed Section 597B (1), (2) and (3) agreed to.

Clause 65—Proposed Section 598(1) agreed to.

On Clause 74, Proposed Section 634(1), (2), (3), (5), (6) and (7).

Mr. Woolliams: May we have a word in explanation on why that is necessary? I have discussed it with somebody in the Department and I think it is a good move. I think we should have a statement on that.

Mr. Turner (Ottawa-Carleton): That belongs to the Solicitor General. I think we ought to stand that and go to Clause 75.

Clause 74 stood.

On Clause 75—Proposed Section 637 (1) and (2).

Mr. MacGuigan: I think that a number of corrections authorities have serious misgivings about some of the things proposed for sections 637 and 638. I note in a brief of The Canadian Corrections Association that they suggest that the report which is mentioned in Section 637 should be a confidential one, and I understand that they propose making this available to the accused or his counsel, and I guess the prosecutor as well. Does the Department or the Minister have any comment on this?

Mr. Turner (Ottawa-Carleton): I think in terms of the adversary system that it would be quite improper to have a report that was confidential only to the court and may affect the judge's feelings about sentencing without

[Interpretation]

tructions à son jury. Il me semble que l'on devrait dire qu'il faudrait avoir le droit d'entendre ce que la Couronne a à dire avant de juger si l'accusé est en état de subir son procès ou non.

M. Turner (Ottawa-Carleton): C'est une question de politique. Nous pensons que c'est le juge au procès qui devrait avoir compétence en ce qui concerne les deux aspects de la question.

Article 55 relatif à l'article 583(1), (2) et (3), adopté.

Article 56 relatif à l'article 584(3), adopté.

Article 60, relatif à l'article 592 (1), (2) et (3), adopté.

Article 63, relatif à l'article 597 (2), adopté.

Article 64, relatif à l'article 597B (1), (2) et (3), adopté.

Article 65, relatif à l'article 598 (1), adopté.

A l'article 74, relatif à l'article 634 (1), (2), (3), (5), (6) et (7).

M. Woolliams: On pourrait m'expliquer pourquoi il est nécessaire de changer cet article. Je crois que c'est une façon de procéder qui est assez bonne, mais je crois qu'il faudrait faire une déclaration à ce sujet.

M. Turner (Ottawa-Carleton): Cela relève du Solliciteur général. Je pense qu'on devrait approuver cela et passer à l'article 75 du bill.

L'article 74 du bill est réservé.

Article 75, relatif à l'article 637 (1) et (2).

M. MacGuigan: Je pense qu'un certain nombre d'autorités en matière correctionnelle ont des inquiétudes sérieuses au sujet de ce qui a été proposé pour les articles 637 et 638 du Code. L'Association canadienne des services correctionnels a laissé entendre que le rapport mentionné ici doit être un rapport de nature confidentielle. On propose que ce rapport soit remis à l'accusé ou à son avocat, de même qu'au procureur. Le ministre a-t-il des observations à faire à ce sujet?

M. Turner (Ottawa-Carleton): Je pense qu'avec le système des adversaires que nous avons, il ne serait pas convenable que le rapport ne soit confidentiel que pour la cour, et peut influencer sur les sentiments du juge au

[Texte]

allowing parties to have it available. That is the basis of that.

Mr. Gilbert: Mr. Chairman, the practice in Toronto has been to give the Crown counsel and also defence counsel a copy of the probationary report, and it has worked most satisfactorily.

Mr. Turner (Ottawa-Carleton): Sure, it is perfectly proper, and then either side can challenge the report.

Mr. Hogarth: As Dr. MacGuigan suggested, some people interested in corrections have made some comments on the provisions with respect to probation and suspended sentence. Although I think that what we have done here is somewhat admirable in extension of what we had before, I would like to put forward with respect to pre-sentence reports three suggestions by the Elizabeth Fry Society. They have suggested, sir, that in all cases where the accused is a first offender, or is a young adult offender, or where the counsel or the prosecutor requests such a report and a definite term of imprisonment may be imposed, that pre-sentence reports should be mandatory. Has the Department given any consideration to suggestions of that nature?

Mr. Woolliams: In practice, where a man is remanded for sentence we get a report like that anyway.

An hon. Member: We have to ask for it in the courts in Toronto.

Mr. Woolliams: Well, I suppose it is a matter of procedure.

Mr. Alexander: You do not in Hamilton; it is a matter of fact in Hamilton.

Mr. Hogarth: Mr. Chairman, I think the Minister would like to make an observation on what this Society has suggested. They are an important agency in dealing with corrections.

Mr. Turner (Ottawa-Carleton): Mr. Scollin will tell you why we rejected that.

Mr. Scollin: First of all, as a practical matter, at the present time it would involve an impossible situation for probation officers to cope with if this were absolutely mandatory. Second, and in any event, it is felt that the

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proper disposition of the case ought to be left with the discretion of the court, and in a proper case the court will in fact require a

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sujet de la sentence, sans que ce document soit communiqué aux deux parties en cause.

M. Gilbert: Monsieur le président, l'usage à Toronto veut que l'on donne une copie du rapport sur la période de probation de l'agent de surveillance, à la fois à l'avocat de la défense et au procureur, et le système fonctionne bien.

M. Turner (Ottawa-Carleton): C'est parfaitement à propos et ainsi les deux côtés peuvent le mettre en question.

M. Hogarth: M. MacGuigan nous a dit que certaines personnes qui s'intéressent aux questions de correction ont fait des observations en ce qui concerne la libération surveillée et les sursis. Même si je pense que ce que nous avons fait est une extension de ce que nous avions auparavant, en ce qui concerne les rapports antérieurs à la sentence, j'aimerais vous communiquer trois idées qui ont été exprimées par l'*Elizabeth Fry Society*. On a proposé que dans tous les cas où il s'agit d'un pré-délinquant ou d'un jeune adulte qui en est à son premier délit, ou lorsque l'avocat ou le procureur demande un tel rapport et qu'une peine d'emprisonnement précise est prononcée, que le rapport devrait être rendu obligatoire. Est-ce que le ministère a songé à retenir des idées de ce genre?

M. Woolliams: Dans la pratique, lorsque l'on porte la condamnation à plus tard on nous soumet toujours un tel rapport.

Une voix: Il nous faut le demander, dans les cours de Toronto.

M. Woolliams: Bien, j'imagine que c'est une question de procédure.

M. Alexander: Pas à Hamilton, c'est une question de fait.

M. Hogarth: Je pense que le ministre a quelque chose à dire à propos de l'idée de l'*Elizabeth Fry Society*. C'est une agence importante dans ce domaine.

M. Turner (Ottawa-Carleton): M. Scollin vous dira pourquoi nous l'avons rejetée.

M. Scollin: De façon pratique, d'abord cela placerait les agents de surveillance dans une situation impossible si c'était absolument obligatoire. Aussi, de toute manière, on pense que la bonne façon doit s'en remettre au jugement de la Cour qui dans bien des cas, va demander à l'agent de surveillance de faire part des renseignements nécessaires pour régler le cas. Donc il n'est pas nécessaire de le rendre obligatoire.

[Text]

probation report on any occasion it feels that it could usefully help in disposing of the case. So it is not felt proper to make it mandatory.

Mr. Hogarth: At present there are many areas without probation services.

Mr. Scollin: This is one of the practical reasons.

Mr. Hogarth: The second observation they put forward, Mr. Chairman—it is one that has cropped up certainly in practice in many parts of the country—is that the accused gets this probation report and has an opportunity of reading it but very often it is filled with information which he says is manifestly untrue, and there does not seem to be any procedure whereby this can be challenged. In most instances if the judge is satisfied with the accused's statement that it is untrue, the judge will ignore that part of the pre-sentence report and generally give him the same sentence anyhow. In any event, has the Minister given any consideration to adopting a procedure where these reports may be challenged.

Mr. Turner (Ottawa-Carleton): It can be challenged. We believe that any report can be challenged; there is plenty of scope for the challenging of that report.

Mr. Hogarth: Yes, but there is no procedure in the new amendments where the report can be rejected as of right.

Mr. Turner (Ottawa-Carleton): Any facts submitted before a court, either for an assessment of innocence or guilt or assessments for sentence or procreation, can be challenged; all facts can be challenged. We understand the concern but we do not think there is too much.

Mr. Hogarth: ...to be concerned about.

Mr. Turner (Ottawa-Carleton): Yes, right.

Mr. Hogarth: Fine.

Mr. Murphy: I would like to make one observation, Mr. Chairman. These provisions come into effect only after an accused has been convicted, in other words after trial or after he has pleaded guilty. We have run into cases in practice where because of obvious circumstances an accused is guilty and equally obviously it is highly likely that sentence is going to be suspended. But we cannot get the probation order until after a plea of guilt. It is very difficult for a magistrate to remand a person on his own recognizance after a plea of guilt pending the receipt of the pre-sen-

[Interpretation]

M. Hogarth: Il y a plusieurs domaines privés de services de surveillance.

M. Scollin: C'est une des raisons pratiques.

M. Hogarth: La deuxième observation est une situation qui s'est produite dans la pratique dans plusieurs parties du pays. Là où ce rapport existe, il arrive souvent que le prévenu en prenne connaissance et juge inexacte une grande partie des renseignements qui s'y trouvent et il ne semble pas y avoir de façon d'en juger. Dans la plupart des cas, si le juge se satisfait de la déclaration de l'accusé selon laquelle il est faux, il va passer outre à ce qu'il y a dans le rapport et prononcera de toute façon la même peine. Est-ce que le ministre a songé à une façon de mettre en doute l'exactitude des renseignements?

M. Turner (Ottawa-Carleton): On peut le mettre en doute. Nous croyons que tout rapport peut être mis en doute.

M. Hogarth: Mais dans les nouveaux amendements, rien ne prévoit que l'on puisse rejeter le rapport.

M. Turner (Ottawa-Carleton): Tous les faits soumis au tribunal, soit dans le but de déterminer l'innocence ou la culpabilité, soit pour la condamnation ou la libération conditionnelle, peuvent être mis en doute, tous ces documents peuvent être mis en doute. Nous comprenons votre préoccupation, mais il n'y a pas de quoi...

M. Hogarth: ...s'inquiéter.

M. Turner (Ottawa-Carleton): Exactement.

M. Hogarth: C'est bien.

M. Murphy: Monsieur le président, j'ai une observation à formuler. Ces dispositions ne sont mises en vigueur que lorsque l'accusé a été condamné, autrement dit, lorsque le procès est terminé ou après qu'il a plaidé coupable. Dans la pratique, il y a certains cas où à cause de raisons assez évidentes, un accusé est coupable et il est fort probable que la sentence sera suspendue. Toutefois, nous ne pouvons pas obtenir une ordonnance de libération conditionnelle avant de plaider coupable. Il est très difficile pour un juge de remettre à plus tard l'audition d'une cause sur la

[Texte]

tence report. Has any consideration at all been given to allowing a pre-sentence report to be made before a plea of guilt or before conviction with the consent of the accused?

Mr. Turner (Ottawa-Carleton): No consideration has been given to that. The probation people themselves do not want it, because they are dealing then with a hypothetical situation.

Clause 75, proposed Section 637(1) and (2), agreed to.

On Clause 75, proposed Section 638(1)—Making of probation order.

Mr. MacGuigan: Mr. Chairman, with regard proposed Section 638(1) there are a number of objections which are raised by the Canadian Corrections Association. There are four reasons given for the opposition to the proposal in (b). One of these is that the aim of probation is in part to shield the accused from the possible contamination of prison. The second is that supervised freedom following imprisonment is properly to be classified as parole, not as probation, and there is considerable change in the usual concepts involved here.

The third is that the court cannot predict accurately the effect of the prison experience and the time when the inmate will be ready for release—and of course the court has to do this in advance. The fourth is that confusion arises if the inmate is granted parole before his period of probation comes into effect. In general, I understand that the contention is that this paragraph would greatly confuse the notions of parole and probation and that it is undesirable as phrased.

Mr. Turner (Ottawa-Carleton): The purpose of this paragraph is to provide an alternative to sentence or an addition to the sentence and to set out clearly the terms on which the probation order can be given. The source of this amendment were people working in the corrections field generally who advocated such a reform, particularly the Ontario Probation Officers' Association. In a paper released in February, 1967 The Canadian Corrections Association called for a national probations act to set out the desirable specifications concerning probation. It was the paper published by The Canadian Corrections Association that inspired the work done by the Ontario probation officers, and those two works have really been the source of this material.

[Interprétation]

parole de l'accusé après avoir plaidé coupable en attendant le rapport antérieur à la sentence. Est-ce qu'on a songé à permettre qu'un rapport antérieur à la sentence soit présenté avant que l'accusé ne plaide coupable, ou avant la condamnation avec le consentement de l'accusé.

M. Turner (Ottawa-Carleton): On n'y a pas songé. Les agents de surveillance ne l'ont pas demandé, car ils ont alors affaire avec une situation hypothétique.

L'article 75 du Bill, relatif aux paragraphes (1) et (2) de l'article 637 du Code est adopté.

Article 75 du Bill relatif au paragraphe (1) de l'article 638 du Code, Prononcé de l'ordonnance de libération conditionnelle.

M. MacGuigan: En ce qui concerne le nouvel article 638 (1), on peut faire valoir un certain nombre d'objections. Les associations canadiennes des services correctionnels y voient plusieurs inconvénients. Notamment, en ce qui concerne le paragraphe (b), on estime d'abord que le but de la liberté surveillée est d'empêcher l'accusé de succomber à la contamination dans les prisons. Ensuite, il faut faire la différence entre la liberté après emprisonnement surveillée et la libération conditionnelle plutôt.

Troisièmement, le tribunal ne peut prédire avec exactitude l'effet de l'incarcération, le temps où l'accusé sera prêt à être libéré et la cour doit prévoir tout cela à l'avance. Et enfin, il se produit une certaine confusion si on met le détenu en liberté conditionnelle avant que la liberté surveillée entre en vigueur. En général, on croit que cet alinéa confondrait grandement les notions de liberté surveillée et de libération conditionnelle, et la teneur n'en est pas souhaitable.

M. Turner (Ottawa-Carleton): Il s'agit ici de fournir une solution de rechange qui puisse remplacer ou augmenter la peine et d'indiquer clairement les conditions dans lesquelles cette libération peut être accordée. Les gens qui s'occupent des questions de correction en général, ont proposé cette réforme, notamment l'Association ontarienne des agents de liberté surveillée. Dans un document publié en février 1967, l'Association canadienne des services correctionnels a demandé l'adoption d'une loi nationale sur les mises en liberté surveillées qui exposerait les exigences souhaitables en matière de liberté surveillée. C'est un document de l'Association canadienne des services correctionnels qui a inspiré le travail des agents de liberté surveillée de l'Ontario et ce sont ces deux travaux qui ont servi de base.

[Text]

So since 1967 we have been basing these sections on their work. That is the only substance I can give you to that comment.

The Chairman: Mr. Hogarth?

Mr. Hogarth: Mr. Turner, my attention is directed to proposed Section 638(1) (b). From several comments that have been made to me it appears that people are misreading that section. It can be read:

(b) in addition to fining the accused or sentencing him to imprisonment, whether in default of payment of a fine or otherwise, for a term not exceeding two years, direct that the accused comply with the conditions prescribed in a probation order.

It is my understanding that the power of the court to award suspended sentence under paragraph (b) arises out of Section 633, where it is a fine with punishment in addition.

Mr. Turner (Ottawa-Carleton): Mr. Hogarth, the problem is that those words, "for a term not exceeding two years" relate to the imprisonment, not to the conditions described in the probation order. I think that is the natural construction on reading it.

Mr. Hogarth: Others have read it otherwise, but...

Mr. Turner (Ottawa-Carleton): I am asking that you and I, as reasonable men, read it the way I think it reads.

Mr. Hogarth: I have one more point. The Elizabeth Fry Society again is concerned about the imposition of a probation order in addition to a fine where the payment of the fine is unrelated to the probation order. That is to say, they suggest that the payment of a fine should be a condition in the probation order, and that default of payment of the fine should be dealt with within the confines of the probation order. Otherwise a man can be on a probation order and because of his non-payment of the fine he can go to jail.

Mr. Turner (Ottawa-Carleton): Surely he will not go to jail unless there has been a deliberate default in the payment of the fine.

Mr. Hogarth: Of course, but then he is on a probation order. Their suggestion is that the

[Interpretation]

Ainsi donc depuis 1967, nous avons fondé ces articles sur le travail préparatoire fait par ces gens-là. C'est à peu près tout ce que je peux vous dire.

Le président: Monsieur Hogarth?

M. Hogarth: Monsieur Turner, je m'intéresse à l'alinéa (1) b) de l'article 638. A la suite de plusieurs observations qui ont été faites au sujet de cet article, il semble qu'on l'interprète mal. On peut y lire:

b) en plus d'infliger une amende à l'accusé ou de le condamner à l'emprisonnement pour défaut de paiement d'une amende ou pour un autre motif, pour une période ne dépassant pas deux ans, ordonner que l'accusé se conforme aux conditions présentées dans une ordonnance de libération conditionnelle.

Je crois que le pouvoir prévu en vertu de l'alinéa b) découle de l'article 622 où on prévoit une amende, en plus d'une peine.

M. Turner (Ottawa-Carleton): Monsieur Hogarth, le problème, c'est que ces mots, «pour une période ne dépassant pas deux ans», ont trait à l'emprisonnement, et non aux conditions dont il est question dans l'ordonnance de libération conditionnelle. C'est ainsi qu'il faut interpréter cette disposition.

M. Hogarth: D'autres personnes l'ont interprétée autrement, mais...

M. Turner (Ottawa-Carleton): Nous sommes raisonnables, et je pense qu'il faut l'interpréter comme il faut.

M. Hogarth: Une autre question. La *Elizabeth Fry Society* s'inquiète du fait qu'on impose une ordonnance de libération conditionnelle en plus d'une amende, lorsque le paiement de l'amende n'a rien à voir avec l'ordonnance de libération conditionnelle. On propose donc que le paiement de l'amende soit une condition de l'ordonnance de libération conditionnelle, et qu'on tente de résoudre le défaut de paiement de l'amende dans le cadre de l'ordonnance de libération conditionnelle. Autrement, un individu peut être en liberté surveillée, et parce qu'il ne paie pas une amende, il peut être envoyé en prison.

M. Turner (Ottawa-Carleton): Naturellement, il n'ira tout de même pas en prison, à moins qu'il n'y ait un défaut, de propos délibéré, en ce qui concerne le paiement de l'amende.

M. Hogarth: Sans doute, mais il y a, à ce moment-là, une ordonnance de libération con-

[Texte]

probation order should also provide for the terms of payment of the fine.

Mr. Turner (Ottawa-Carleton): That is one view, Mr. Hogarth. We have chosen, after hearing that view, to use this type of procedure here.

The Chairman: Mr. MacGuigan?

Mr. MacGuigan: Mr. Chairman. I would like to inquire of the minister whether he thinks that there would be any advantage in allowing an opportunity for the offender to refuse, or accept, a probation order and the terms set out by the court under paragraph (b)? One of the difficulties is that if he does violate the terms and has to be brought into court again it appears that he is being sentenced twice for the same offence, which makes for a double-jeopardy, too.

If the offender had the choice in the beginning of taking either a heavier sentence or a lighter sentence, plus this period of parole, then he could be prosecuted for violation of his agreement rather than for, as it would appear, committing the offence a second time.

Mr. Turner (Ottawa-Carleton): There are some people who do not want to be rehabilitated. Certainly the court, in assessing sentence and deciding whether a probation order should be ordered, will take into account the accused's attitude towards imposing a provision order. The court is looking towards an effective sentence, but it is still a matter for the court to decide what the sentence and probation are to be, and not a matter for the accused. Obviously, if the accused expressed

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himself as unwilling to accept probation and wanted to go to jail, the judge would take that into consideration.

Mr. MacGuigan: You are suggesting he does have an option, in fact.

Mr. Turner (Ottawa-Carleton): He does have an option, in fact.

The Chairman: Mr. Cantin.

Mr. Cantin: Monsieur le Président, nous étudions maintenant l'article 75, il y a déjà quelque temps j'ai reçu du Juge Ouimet, le Président du Comité canadien de la réforme pénale et correctionnelle, des suggestions pour modifier cet article afin de rendre sa terminologie plus conforme au glossaire du rapport qui doit être déposé par ce comité à la fin du mois.

[Interprétation]

ditionnelle. Ce qu'on dit ici, c'est que l'ordonnance de libération conditionnelle devrait prévoir aussi les modalités de paiement de l'amende.

M. Turner (Ottawa-Carleton): C'est un point de vue, monsieur Hogarth. Nous avons entendu ce point de vue, mais nous avons préféré cette procédure-ci.

Le président: Monsieur MacGuigan?

M. MacGuigan: Monsieur le président, je veux demander au ministre s'il pense qu'il y aurait avantage à permettre à la personne qui a commis le délit d'accepter ou de refuser une ordonnance de libération conditionnelle aux conditions établies par le tribunal en vertu de l'alinéa b)? Un des problèmes qui se posent, c'est que si l'accusé va à l'encontre des conditions prévues et qu'il doit se présenter de nouveau devant le tribunal, il reçoit une deuxième sentence pour le même délit.

S'il avait le choix au début entre une sentence plus lourde et une sentence plus légère, plus cette période de libération conditionnelle, on pourrait alors l'accuser d'avoir violé l'entente, plutôt que d'avoir commis le délit une deuxième fois.

M. Turner (Ottawa-Carleton): Il y a des gens qui ne veulent pas être réhabilités. Il est certain que le tribunal, en fixant la peine et en déterminant s'il doit y avoir une ordonnance de libération conditionnelle, tiendra certainement compte de l'attitude de l'accusé en ce qui concerne l'imposition de cette ordonnance. Le tribunal cherche à rendre une sentence efficace, mais c'est encore à lui de décider ce que doit être la sentence ou ce que doit être la libération conditionnelle. C'est au

tribunal à décider et non pas à l'accusé. Évidemment, si l'accusé n'est pas disposé à accepter sa libération conditionnelle et s'il préfère aller en prison, le juge en tiendrait compte.

M. MacGuigan: Selon vous, il peut faire un choix, en fait.

M. Turner (Ottawa-Carleton): En effet.

Le président: Monsieur Cantin.

Mr. Cantin: Mr. Chairman, we are now dealing with Clause 75, and it is already some time ago that I received from Mr. Justice Ouimet, who is the Chairman of the Canadian Committee on Penal and Correctional Reform, various suggestions to amend this clause so that its terminology may be more in conformity with the glossary in the report to be tabled by the Committee at the end of this month.

[Text]

Alors, en conséquence, je propose:

Que l'article 75 de la version française du Bill C-150 soit modifié

a) par le retranchement, partout où ils apparaissent, des mots «libération conditionnelle» et leur remplacement par le mot «probation». Et (N.B.: ces mots apparaissent aux pages:

81 dans la rubrique et aux lignes 28, 36, 37 et 40;

82, aux lignes 5 et 6, 41 et 42;

83, aux lignes 2, 11 et 12, 23 et 24, 35 et 36 et 40;

84, aux lignes 20 et 21, 23, 30 et 31;

85, aux lignes 3 et 4, 8 et 9, 24, 39 et 40;

86, aux lignes 20, 21 et 22, 30 et 31.) et

(b) par le retranchement, partout où ils apparaissent, des mots «agent de surveillance» et leur remplacement par les mots «agent de probation».

N.B.: ces mots également apparaissent aux pages: 81, à la ligne 4;

82, aux lignes 9 et 10, 26 et 27.

Le but de cet amendement, monsieur le président, est tout simplement de rendre la terminologie du Bill conforme au glossaire proposé par le rapport qui sera produit incessamment par le Comité canadien de la Réforme pénale et correctionnelle de façon à rendre le Code criminel conforme à ce rapport. Il y aurait également la formule qui est liée à cet article, formule que l'on peut voir à la page 99. Je propose:

Que la formule 44 de la version française du Bill C-150, soit modifiée par le retranchement des lignes 20 et 21 de la page 99 et leur remplacement par «ordonnance de probation».

As I say, Mr. Chairman, this is only to amend the French version. For the English version I think I will put my confidence in my good friend, Mr. Hogarth. I feel confident that he will confirm that my French version was correct.

M. Hogarth: I believe you!

The Chairman: I think we can dispense with the repetition of that in English.

Amendment agreed to.

Clause 75, proposed Section 638(1) (a) and (b) agreed to.

Clause 75, proposed Section 638(2)—Conditions in probation order.

The Chairman: Mr. McCleave?

Mr. McCleave: I have talked this over with a magistrate who says that it is all very

[Interpretation]

Consequently, I move:

That clause 75 of the French version of Bill C-150 be amended

a) by striking out the words "libération conditionnelle" wherever they appear therein and substituting therefor the word "probation";

(Note: these words appear at:

page 81, in the heading and in lines 28, 36 and 37, 40; page 82, in lines 5 and 6, 41 and 42; page 83, in lines 2, 11 and 12, 23 and 24, 35 and 36, 40; page 84, in lines 20 and 21, 23, 30 and 31; page 85, in lines 3 and 4, 8 and 9, 24, 39 and 40; page 86, in lines 20, 21 and 22, 30 and 31.) and

b) by striking out the words "agent de surveillance" wherever they appear therein and substituting therefor the words "agent de probation".

(Note: these words appear at:

page 81, in line 4; page 82, in lines 9 and 10, 26 and 27.)

Mr. Chairman, the purpose of this amendment is simply to have the terminology of the bill conform with the glossary proposed by the report which will be tabled forthwith by the Canadian Committee on Penal and Correctional Reform so as to have the Criminal Code conform with that report. There would also be the formula that is tied to that clause and which is to be found on page 99. I move:

That Form 44 of the French version of Bill C-150 be amended by striking out lines 20 and 21 of page 99 and substituting the following:

"Ordonnance de probation".

Comme je l'ai dit, monsieur le président, il s'agit seulement de modifier la version française. Pour ce qui est de la version anglaise, je vais m'en remettre à mon ami, M. Hogarth, qui va certainement admettre que mes corrections sont justes.

M. Hogarth: Je vous crois.

Le président: Je crois que nous pourrions éviter de répéter cela en anglais.

L'amendement est approuvé.

L'article 75, projet d'article 638 (1) a) et b) est approuvé.

L'article 75, projet d'article 638 (2), Conditions d'une ordonnance de libération conditionnelle.

Le président: Monsieur McCleave?

M. McCleave: J'en ai discuté avec un magistrat, qui a dit que tout cela est excel-

[Texte]

excellent material but he wondered about the bodies to carry out the supervision, or to see that the person placed on such an order actually carried it out. Has the department had thoughts on this particular matter?

Mr. Turner (Ottawa-Carleton): The provinces will have the responsibility of appointing people to implement the law.

Mr. McCleave: They might have the responsibility. I wonder if they have the money.

An hon. Member: What does Mr. Turner say to that question?

Mr. Turner (Ottawa-Carleton): I know where the honourable gentleman comes from.

Mr. MacGuigan: Mr. Chairman, along the same lines, is there any possibility of bringing these provisions into effect gradually in accordance with the availability of actual supervision? I think the fear is that ordinary

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parole will suffer as the case loads of those who work in this field become unmanageably large.

Mr. Turner (Ottawa-Carleton): This statute will be brought into force and the provinces will do their best to provide the necessary personnel to make it effective. Of course, they will just have to check these facilities as they develop.

The Chairman: Mr. Hogarth?

Mr. Hogarth: Mr. Turner, paragraph (h) reads:

(h) comply with such other reasonable conditions as the court considers desirable for securing the good conduct . .

Is it the department's view that that would have to relate to the specific offence, or could it be anything, such as going to church on Sunday? How broadly does the department view that section?

Mr. Turner (Ottawa-Carleton): We interpret the governing words at the beginning of the subsection "deemed to be prescribed". In other words they are:

deemed to be prescribed in a probation order, namely, that the accused shall keep the peace and be of good behaviour

and so on, relating to that offence; and in the order one or more of these conditions are set out as examples of reasonable conditions that may be imposed or inserted in a probation

[Interprétation]

lent, mais qui s'est demandé quels organismes vont s'occuper de la surveillance, ou voir à ce que la personne en cause en tienne compte. Le ministère a-t-il songé à cette question?

M. Turner (Ottawa-Carleton): Les provinces devront nommer les personnes chargées de faire appliquer la loi.

M. McCleave: Elles auront peut-être la responsabilité, mais je doute qu'elles aient l'argent.

Une voix: Qu'est-ce que le ministre a à répondre à cela?

M. Turner (Ottawa-Carleton): Je sais d'où vient l'honorable député.

M. MacGuigan: Monsieur le président, à ce propos, est-il possible que ces dispositions soient mises en œuvre petit à petit, conformément aux possibilités de la surveillance qui existe en réalité? La liberté conditionnelle va en souffrir, car ceux qui travaillent dans ce domaine deviennent très larges.

M. Turner (Ottawa-Carleton): Quand la loi sera en vigueur, les provinces feront de leur mieux pour obtenir le personnel qu'il faut pour l'appliquer dans des conditions satisfaisantes. Bien sûr, elles devront suivre de près la marche des choses.

Le président: Monsieur Hogarth?

M. Hogarth: Monsieur le ministre, l'alinéa h) dit:

h) observer telles autres conditions raisonnables que la cour considère souhaitables pour assurer la bonne conduite. . .

Le ministère croit-il que ça doit se rattacher au délit en question, ou est-ce que cela serait quelque chose comme l'assistance à la messe le dimanche? Comment le ministère voit-il cet article?

M. Turner (Ottawa-Carleton): Nous interprétons les mots importants «censées être prescrites» aux début du paragraphe. En d'autres termes, les conditions sont:

...censées être prescrites dans une ordonnance de libération conditionnelle, savoir: que l'accusé ne trouble pas l'ordre public et ait une bonne conduite...

et cetera, en ce qui concerne le délit et dans l'ordonnance, une ou plusieurs de ces conditions sont fixées comme exemples de conditions raisonnables qui peuvent être imposées

[Text]

order; and subsection (h) is the general clause relating again to the—

Mr. Hogarth: ...specific offence.

Mr. Turner (Ottawa-Carleton): The specific offence, yes.

Mr. Hogarth: It is my suggestion, Mr. Turner, that in dealing with young offenders...

Mr. Turner (Ottawa-Carleton): We are talking about the rehabilitation of the accused relating to the conduct that got them into court in the first place.

Mr. Hogarth: I appreciate that, but the earlier subsections do not necessarily have to relate to the offence. For instance, to take an extreme case, a young lad could be found to be in possession of stolen goods, and in a probation order the court is empowered to make an order to have him abstain from owning, possessing or carrying any weapon which is not related to the offence.

Mr. Turner (Ottawa-Carleton): Yes; but we refer to any or more of these conditions...

Mr. Hogarth: Yes.

Mr. Turner (Ottawa-Carleton): And obviously the...

Mr. Hogarth: The one I want to refer to, Mr. Turner, is the one for young offenders. Absolutely nothing will more deter them from bad behaviour than taking away their "wheels". It seems to me that a specific clause should be inserted that the magistrate, in making a probation order, can prohibit the right to drive. I do not think that would necessarily come under subsection (h) if that has to relate to the offence.

Mr. Turner (Ottawa-Carleton): Here is the section:

(h) comply with such other reasonable conditions as the court considers desirable for securing the good conduct of the accused and for preventing a repetition by him of the same offence...

That has to be interpreted in a reasonable way by the magistrate and the judge.

Mr. Hogarth: I appreciate that; but, in a given case, the magistrate might think it very advisable to punish a particular accused by suspending his right to drive. If you are going to make him abstain from consuming alcohol, or abstain from owning weapons, I suggest that it would be very sound also to have a provision that the magistrate can suspend his right to drive.

[Interpretation]

ou insérées dans une ordonnance de probation; et l'alinéa h) est la clause générale relatives une fois de plus aux...

M. Hogarth: ...délits en question.

M. Turner (Ottawa-Carleton): Aux délits en question, oui.

M. Hogarth: Je suggère, M. Turner, que lorsqu'il s'agit de jeunes délinquants...

M. Turner (Ottawa-Carleton): Nous parlons de la réhabilitation de l'accusé dans le domaine qui l'a amené en cours à l'origine.

M. Hogarth: J'en suis très heureux, mais les premiers paragraphes n'ont pas nécessairement à être en rapport avec le délit. Par exemple, pour prendre un cas extrême, un jeune peut être en possession d'articles volés et dans ce cas, une ordonnance de probation de la cour peut l'empêcher de posséder ou de porter une arme, ce qui n'est pas en rapport avec le délit.

M. Turner (Ottawa-Carleton): Oui, mais nous faisons allusion à n'importe laquelle ou plusieurs de ces conditions...

M. Hogarth: Oui.

M. Turner (Ottawa-Carleton): Et évidemment le...

M. Hogarth: Ce à quoi je fais allusion M. Turner, c'est le jeune délinquant. Rien ne les empêchera plus de se mal conduire que de leur enlever leurs bagnoles, si un article était inséré qui autorise le juge, qui établit l'ordonnance de probation, à leur interdire le droit de conduire. Je ne pense pas que cela tombe sous le paragraphe h), cela n'a pas trait au délit.

M. Turner (Ottawa-Carleton): Voici l'article:

h) observer telles autres conditions raisonnables que la cour considère souhaitables pour assurer la bonne conduite de l'accusé et l'empêcher de commettre de nouveau la même infraction...

Ceci doit être interprété de façon raisonnable par le magistrat ou le juge.

M. Hogarth: Je comprends cela, mais dans certains cas particuliers, le magistrat peut penser raisonnable de suspendre le permis de conduire. Si vous désirez qu'ils s'abstiennent de boire, ou qu'ils cessent de posséder des armes, je suggère qu'il serait utile de prévoir une clause permettant au magistrat de suspendre leur permis de conduire.

[Texte]

Mr. Turner (Ottawa-Carleton): There is nothing we can do in this clause to superimpose our judgment on the magistrate. That depends on the good sense of the magistrate. These are the guidelines which we feel are available to him. But if you have an insensitive magistrate nothing we can put in the statutes is going to salvage the situation.

Mr. Blair: Mr. Chairman, the text I have in line 38 goes on:

for preventing a repetition by him of the same offence

and adds the words

or the commission of other offences.

I suggest that this bill quite properly gives the magistrate a pretty wide discretion.

Mr. Turner (Ottawa-Carleton): That is right.

The Chairman: Shall Subsection (2) carry? Mr. McCleave?

Mr. McCleave: I suppose if is broad enough that if the fellow dipped his fingers into the poor box whenever he went to church the magistrate could order him to stay away from church?

Mr. Hogarth: Or go to another one!

Clause 75, proposed Section 638(2) and (3) agreed to.

On Clause 75, proposed Section 638 (4), *Proceedings on making of order*.

Mr. Deakon: Mr. Chairman, is it the intention of this section to have all this done in the court proper, or can it be done in the clerk's office or the Crown's office? Perhaps it would be too time-consuming to have it done in court, especially with the large dockets in metropolitan areas?

Mr. Turner (Ottawa-Carleton): Let us work backwards. Let us start with (c).

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(4) Where the court makes a probation order, it shall

(c) inform the accused of the provisions of...

the subsection and the provisions of section 640A. That is going to have to be done by the court.

I think part of the function of the magistrate is going to be to inform the accused of what the sentence is, the consequences of the order, and so on, and to explain it to him.

(b) cause a copy of the order to be given to the accused;

[Interprétation]

M. Turner (Ottawa-Carleton): Nous ne pouvons rien faire à cet article pour imposer notre jugement au juge. Tout dépend du bon jugement du juge. Ce sont les lignes de conduite qu'il nous semble bon de lui indiquer. Mais si le juge ne fait preuve d'aucune sensibilité, nous ne pouvons rien ajouter aux statuts qui puisse sauver la situation.

M. Blair: Monsieur le président, le texte dit à la ligne 38:

l'empêcher de commettre de nouveau la même infraction.

et on ajoute:

ou de commettre d'autres infractions.

Je crois que le projet de loi laisse beaucoup de discrétion au magistrat.

M. Turner (Ottawa-Carleton): C'est exact.

Le président: Est-ce que le paragraphe 2 est adopté? Monsieur McCleave?

M. McCleave: On laisse tellement de discrétion, j'imagine, que s'il a volé à l'église, le juge pourrait lui demander de ne plus retourner à l'église.

M. Hogarth: Ou d'aller à une autre!

L'article 75 du Bill relatif à l'article 638(2) et (3) du Code est adopté.

L'article 75 du Bill relatif à l'article 638(4). *Procédures lorsqu'une ordonnance est rendue*.

M. Deakon: Monsieur le président, est-ce que cet article a pour but de faire toute la procédure au tribunal même ou est-ce qu'on peut le faire au bureau du greffier ou au bureau de l'avocat de la Couronne? Peut-être que cela prendra trop de temps si on le fait devant le tribunal, surtout avec le rôle des causes qu'il y a dans les centres urbains.

M. Turner (Ottawa-Carleton): Procédons en sens inverse en commençant par l'alinéa c)

(4) Lorsque la cour rend une ordonnance de libération conditionnelle, elle doit: informer l'accusé des dispositions...

du paragraphe et des dispositions de l'article 640A. Il devra le faire au tribunal.

C'est le rôle du magistrat que de renseigner l'accusé sur la nature de sa sentence, des conséquences de l'ordonnance, et ainsi de suite, et de les lui expliquer.

b) Faire remettre une copie de l'ordonnance à l'accusé;

[Text]

That could be given by the probation officer outside the court, I presume.

(a) cause the order to be read by or to the accused;

The probation officer could read that to him outside the court. Certainly in (c) the accused must be informed by the magistrate of the general consequences of the order.

Clause 75, proposed Section 638 (4) agreed to.

Clause 75, proposed Section 639 agreed to.

Clause 75, proposed Section 640 agreed to.

On Clause 75, proposed Section 640A (1), *Failure to comply with order.*

Mr. Hogarth: There will be a great deal of difficulty, Mr. Turner, in proving that he wilfully failed.

Mr. Turner (Ottawa-Carleton): Surely no more difficulty than in any other offence.

Mr. Hogarth: As a matter of fact, I do not know how you can wilfully fail to do anything. You can fail, but how can you wilfully fail?

Mr. Turner (Ottawa-Carleton): You may fail by omission. This is wilful failure or deliberate failure—a deliberate thing—as in “wilful cruelty to animals”. Not an unkind...

Clause 75, proposed Section 640A and B agreed to.

An hon. Member: Have we a form?

The Chairman: We have a form. It is on page 99.

Mr. Turner (Ottawa-Carleton): Form 44; and we have to change the words there, too. Has the form been moved?

Mr. Cantin: Yes.

Mr. Turner (Ottawa-Carleton): Form 44 relates to Section 638 subsection (3) on page 82. Have the forms been passed?

The Chairman: Yes; the forms have been passed. Mr. Alexander?

Mr. Alexander: To revert to Section 640B, I have just happened to notice that you refer in Subsection (c) to “a justice or magistrate.” Does that cover, with all propriety, the title of “magistrates” in Ontario, who are now referred to as judges?

[Interpretation]

L'agent de surveillance pourrait s'exécuter en dehors de la cour dans ce cas, je suppose.

a) faire lire l'ordonnance par l'accusé ou à l'accusé;

Ici encore, l'agent de surveillance pourrait le faire hors de la cour. Mais pour ce qui est de l'alinéa c) c'est le magistrat qui doit renseigner l'accusé quand aux conséquences de l'ordonnance.

L'article 75 du Bill relatif au nouvel article 638(4) du Code est adopté.

L'article 75 du Bill relatif au nouvel article 639 du Code est adopté.

L'article 75 du Bill relatif au nouvel article 640 du Code est adopté.

L'article 75 du Bill relatif au nouvel article 640A(1) du Code—*Défaut de se conformer à un ordonnance.*

M. Hogarth: Monsieur Turner, on aura du mal à prouver qu'il s'agit d'un défaut volontaire.

M. Turner (Ottawa-Carleton): Ça ne sera pas plus difficile que pour d'autres délits.

M. Hogarth: De fait, je ne sais pas comment on peut volontairement omettre de faire quelque chose. On peut omettre, mais omettre volontairement c'est autre chose.

M. Turner (Ottawa-Carleton): Il s'agit d'une omission de propos délibérés, comme lorsque l'on parle de «cruauté délibérée envers les animaux» par exemple.

L'article 75 du Bill relatif au nouvel article 640 A et B du Code est adopté.

Une voix: Est-ce que nous avons une formule?

Le président: Il y a une forme. A la page 99.

M. Turner (Ottawa-Carleton): Formule 44; il y a des modifications à apporter ici. Est-ce qu'on a proposé l'adoption de la formule.

M. Cantin: Oui.

M. Turner (Ottawa-Carleton): La formule 44 se rattache à l'article 638 paragraphe (3) à la page 82. Est-ce que les formules ont été adoptées?

Le président: Oui; les formules ont été adoptées. M. Alexander?

M. Alexander: Pour revenir à l'article 640B, je viens de remarquer que dans le paragraphe c) on trouve «un juge de paix ou un magistrat». Est-ce que cela s'étend en bonne et due forme au titre de «magistrat» en Ontario, qui est maintenant appelé juge?

[Texte]

Mr. Turner (Ottawa-Carleton): We changed the definition of "magistrate".

Mr. Alexander: I am sorry.

Mr. Turner (Ottawa-Carleton): It is in the early part of the Bill, Mr. Alexander.

Mr. Alexander: I was not here.

Mr. Turner (Ottawa-Carleton): It is on page 2:

"(22) "magistrate" means a magistrate, a police magistrate, a stipendiary magistrate, a district magistrate, a provincial magistrate, a judge of the sessions of the peace, a recorder. . .

and so on. And then:

(a) with respect to the Provinces of Ontario and Quebec, a judge of the provincial court,

Mr. Alexander: Thank you, Mr. Chairman.

The Chairman: Mr. Hogarth?

Mr. Hogarth: On a related point of information, has the Minister had any communication with the Attorney General for British Columbia on the bill pending before the Legislature there to change the word "magistrate" to "judge"?

Mr. Turner (Ottawa-Carleton): It has not been passed yet. At the last federal-provincial conference I had conversations here in Ottawa with Dr. Kennedy, the Deputy Attorney General, and I had conversations with Mr. Peterson and Dr. Kennedy in Victoria when I was there. They expressed their

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intention to eliminate the county court and to give the Supreme Court of British Columbia jurisdiction over a combined new supreme and county court of British Columbia. That bill is before the Legislature now, but I do not think it has been passed.

Mr. Hogarth: No; it will not be passed until the end of the Legislature. However, my point is, Mr. Turner, that on page 2 we are amending subsection (22) of section 2 of the Act where "Magistrate" is defined, and it seems to me that if that bill is passed prior to this bill going back before our House, we should include "judge" there from British Columbia.

Mr. Turner (Ottawa-Carleton): I will put it this way. We cannot put it in now because it is just the first reading of a bill before the legislature. If that bill passes before this bill

[Interprétation]

M. Turner (Ottawa-Carleton): Nous avons changé la définition de magistrat.

M. Alexander: Je suis désolé.

M. Turner (Ottawa-Carleton): C'est vers le début du Bill, M. Alexander.

M. Alexander: Je n'étais pas là.

M. Turner (Ottawa-Carleton): C'est à la page 2:

«(28) «magistrat» désigne un magistrat, un magistrat de police, un magistrat stipendiaire, un magistrat de district, un magistrat provincial, un juge des sessions de la paix, un recorder, . . .

et ainsi de suite. Ensuite:

a) relativement aux provinces d'Ontario et de Québec, un juge de la cour provinciale.

M. Alexander: Merci, monsieur le président.

Le président: M. Hogarth?

M. Hogarth: Je voudrais simplement un renseignement. Est-ce que le ministre a eu des entrevues avec le procureur général de Colombie-Britannique sur le bill actuellement devant le parlement en ce qui concerne la différence entre «magistrat» et «juge»?

M. Turner (Ottawa-Carleton): Il n'est pas encore promulgué. Lors de la dernière conférence fédérale-provinciale, j'ai parlé, ici à Ottawa, avec le sous-procureur général, M. Kennedy, et j'ai également parlé avec MM. Peterson et Kennedy à Victoria lorsque j'y suis allé. Ils ont exprimé leur intention de supprimer la cour de comté et de donner à la Cour Suprême de Colombie-Britannique juridiction sur l'ensemble nouvelle cour suprême et de comté de Colombie-Britannique. Ce bill est actuellement devant la législature mais je ne pense pas qu'il ait été promulgué.

M. Hogarth: Non; il ne sera pas promulgué avant la fin de la législature. Cependant, mon point est M. Turner, qu'à la page 2, nous amendons l'alinéa (28) de l'article 2 de la Loi où est défini le mot «magistrat», et il me semble que si ce bill est adopté avant que celui-ci retourne devant la Chambre, nous devrions inclure là le mot «juge» de Colombie-Britannique.

M. Turner (Ottawa-Carleton): Disons que nous ne pouvons pas l'inclure pour le moment parce que ce n'est que la première lecture du bill devant la Chambre. Si ce projet de loi-là

[Text]

passes the report stage, we could always amend it at that time.

Mr. Hogarth: Will you ensure your officials are mindful of that situation, sir?

Mr. Turner (Ottawa-Carleton): We are mindful constantly of what happens in British Columbia—on a daily basis, Mr. Hogarth!

Mr. Hogarth: I thought it was only on Tuesdays and Thursdays and sometimes on Wednesday afternoons!

The Chairman: Gentlemen, it is my understanding that we have dealt with all the clauses in this proposed bill under the jurisdiction of the Minister of Justice, with the exception of the clauses pertaining to abortion. We will now have the Solicitor General, who will deal with the parole sections of the bill and other clauses.

Gentlemen, may we start? Please turn to page 79, Clause 74. The Solicitor General will introduce his associates. Mr. McIlraith?

Hon. G. J. McIlraith (Solicitor General of Canada): Gentlemen, I do not propose to make general remarks about the amendments that pertain to our Department, but I shall be very happy to answer any questions you may care to ask. With me is the Deputy Solicitor General, Mr. Côté, who I believe has not appeared before the Committee before, as well as Mr. A. J. MacLeod, Commissioner, Canadian Penitentiary Service; Mr. T. G. Street, Chairman, National Parole Board and National Penitentiary Board; Mr. England, Solicitor, and some others who are on the staff as well. We will try to answer your questions.

The Chairman: Thank you, Mr. McIlraith. On Clause 74.

Mr. McIlraith: The purpose behind this amendment is simply this: Under the former law a man under sentence of less than two years, no matter how many sentences were involved, went to the provincial institution. Therefore, he might be serving a good many more years than two years in a provincial institution, and they do not have the training geared for the longer term prisoners. This was done with the concurrence of the provinces.

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Clause 74 agreed to.

[Interpretation]

est approuvé avant que celui-ci ne soit rapporté à la Chambre, nous pourrions toujours le modifier à ce moment-là.

M. Hogarth: Pourriez-vous, monsieur, faire en sorte que vos fonctionnaires tiennent compte de cette situation?

M. Turner (Ottawa-Carleton): Nous sommes constamment au courant de ce qui se passe en Colombie-Britannique et cela sur une base journalière, monsieur Hogarth.

M. Hogarth: Je me demandais si c'était seulement le mardi et le jeudi, et parfois le mercredi après-midi.

Le président: Messieurs, nous avons, je pense, traité de tous les articles de ce projet de loi qui relève du ministre de la Justice sauf les dispositions relatives à l'avortement. Nous avons maintenant avec nous le solliciteur général qui nous entretiendra sur les articles du bill portant sur la libération conditionnelle et sur d'autres articles. Messieurs, pouvons-nous commencer? Veuillez prendre la page 79, l'article 74. Le solliciteur général va vous présenter ses collègues. Monsieur McIlraith?

L'hon. G. J. McIlraith (solliciteur général du Canada): Messieurs, je n'ai pas l'intention de faire des observations au sujet des amendements qui portent sur notre ministère, mais je me ferai un plaisir de répondre aux questions que vous aurez l'obligeance de poser. Le solliciteur général adjoint, M. Côté, qui n'a pas comparu devant le Comité auparavant; ainsi que M. MacLeod, commissaire, Service canadien des pénitenciers; M. T. G. Street, président de la Commission nationale de la libération conditionnelle et de la Commission nationale des pénitenciers; M. England, solliciteur, et quelques autres fonctionnaires supérieurs. Nous allons tenter de répondre à vos questions si c'est possible.

Le président: Merci monsieur McIlraith. Article 74.

M. McIlraith: L'objectif de cet article est le suivant: En vertu de l'ancienne loi, quel que soit le nombre de condamnations, une personne qui est condamnée à une peine de moins de deux ans, doit purger sa sentence dans une institution provinciale. C'est pourquoi il se peut que le condamné doive purger des peines de plus de deux ans dans une institution provinciale, sans que celle-ci soit bien équipée pour pouvoir recevoir des prisonniers condamnés à de longues peines. Ceci a été fait avec l'assentiment des provinces.

L'article 74 du bill est approuvé.

[Texte]

On Clause 94—Parole Act.

Mr. McCleave: I have a question here, Mr. Chairman. The phrase "criminal contempt of court" is used and it seems to me that the word "criminal" is badly placed; it should be simply "contempt of court" which is very standard in the law. "Criminal contempt of court"—I do not know what that means. Does it mean shooting at the magistrate or judge, or doing some act which in itself is a crime?

Mr. McIlraith: Mr. England perhaps can answer that.

The Chairman: Mr. England?

Mr. L. L. England (Solicitor, National Penitentiary Board): There is a distinction between civil contempt of court and criminal contempt of court. It is thought that where the contempt of court is of such nature that in the eyes of the public the court has been held in contempt it is criminal contempt of court. Where a person is a party to a contempt of court—for example, where an accused shouts abusive language to the magistrate—such a case I would suggest is civil contempt of court.

If it is civil contempt of court it is a common law offence against a provincial court and therefore not an offence against the laws of Canada. If it is criminal contempt of court, then it is considered to be a substantive part of the criminal law and therefore coming within the jurisdiction of the Parole Act.

Mr. McCleave: Mr. Chairman, the argument I would make is that I have read Section 9 of the Criminal Code and it does not refer to criminal contempt. It simply uses the word "contempt" and I suggest we are getting into graduations of whether something is of a more minor nature than, say, extreme behaviour.

I think the fact that the person is under a sentence of imprisonment for what he did in the court, for the contempt of court, is sufficient in itself to bring him under the section and, if he is not under the sentence of imprisonment, obviously the section does not apply to him. I do not think the point made by the witness is valid in law. I do not think people have drawn the distinction between civil contempt and criminal contempt.

The Chairman: Mr. Hogarth?

[Interprétation]

Article 94—Loi sur la mise en libération conditionnelle.

M. McCleave: Je voudrais poser une question, monsieur le président. La phrase «outrage au tribunal en matières pénales», me semble mal à propos, et je pense que les mots «matières pénales» sont mal placés; on devrait simplement dire «outrage au tribunal», ce qui est une procédure très normale en droit. Je ne sais ce qu'on veut dire par «outrage au tribunal en matières pénales». Cela veut-il dire tirer sur le magistrat ou sur le juge, ou commettre un acte qui est un crime en soi?

M. McIlraith: M. England pourrait répondre.

Le président: Monsieur England?

M. L. L. England (Solliciteur, Commission nationale des pénitenciers): Il y a une différence entre l'outrage civil et l'outrage criminel. On est d'avis qu'il y a outrage criminel lorsque l'outrage, aux yeux du public, est de nature à mépriser le tribunal. Lorsqu'une personne prend part à un outrage au tribunal, c'est-à-dire lorsqu'un accusé adresse au juge des paroles injurieuses, c'est, à mon sens, un outrage au tribunal, même si c'est une cause civile. Si c'est un outrage au tribunal, cela constitue un délit de droit commun contre une cour provinciale, sans être un délit contre les lois canadiennes. Si c'est un outrage au tribunal en matières pénales, c'est considéré comme étant partie positive du droit criminel et par conséquent tombant sous la juridiction de la loi sur la mise en liberté conditionnelle.

M. McCleave: J'ai lu l'article 9 du Code criminel lequel ne mentionne pas l'outrage au tribunal en matières pénales. L'article mentionne simplement le mot «outrage» et je pense que nous avons atteint un point où nous devons décider si quelque chose est moins important qu'un comportement exceptionnel. Je crois que le fait que la personne est condamnée à l'enprisonnement pour son comportement au tribunal, c'est-à-dire pour «outrage au Tribunal» est suffisant pour que l'article s'applique à son cas et, s'il n'a pas été condamné à l'emprisonnement, il est évident que l'article ne s'applique pas à son cas.

Du point de vue légal, je ne crois pas que l'observation faite par le témoin soit tellement valable. Je ne crois pas qu'on ait établi la distinction entre «l'outrage au Tribunal» et l'«outrage au tribunal en matières pénales».

Le président: Monsieur Hogarth?

[Text]

Mr. Hogarth: Mr. Chairman, without getting into the question of what is criminal or civil contempt, because that can be a very knotty question in itself, I think this amendment in Clause 94 is to provide that where a person is sentenced to imprisonment for criminal contempt he comes under the provisions of the Parole Act.

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In British Columbia, in Regina versus Stevens, Mr. Stevens was sentenced to one year in prison for a criminal contempt of court arising out of failure to obey a court order and he was imprisoned, and it was found that by virtue of the fact that those sentenced for criminal contempt of court could not be paroled he could not come under the auspices of the National Parole Board. Correct me if I am wrong, Mr. Minister, but I think this is just to clear up that situation.

Mr. McIlraith: Yes, that is right; there was no jurisdiction to deal with his sentence. The National Parole Board had no jurisdiction because he was not sentenced to an offence under the Criminal Code. If you would like us to take a look at this with the Justice Department officers we could hold this clause until we check it out.

Mr. McCleave: I think the point is important enough; I ask that it be checked overnight.

Mr. McIlraith: Yes, I would be very glad to do that.

Clause 94 (1) (b) and (ba) stood.

Clauses 94 (2) to 95 (2) inclusive agreed to.

On Clause 96.

Mr. MacEwan: I think when the estimates of the Minister were before this Committee before Mr. Street suggested at that time that the increase in the members of the Board would enable members of the Parole Board to go to various institutions or to leave Ottawa to interview people. Would you just amplify on that a little.

Mr. McIlraith: Yes, that statement was made, Mr. MacEwan. Do you care to amplify on it, Mr. Street?

Mr. T. G. Street (Chairman, National Parole Board): Mr. Chairman, I did say that and that is what the Board plans to do—to have hear-

[Interpretation]

M. Hogarth: Monsieur le président, sans entrer dans les détails concernant cette question, j'ai l'impression que l'amendement à l'article 94 du bill proposé ici a pour but de prévoir que lorsqu'une personne est condamnée à l'emprisonnement pour outrage au tribunal en matière pénales, il est assujéti aux dispositions prévues par la Loi sur la libération conditionnelle des détenus.

En Colombie-Britannique, dans le cas de la Couronne, contre Stevens, M. Stevens a été condamné à une année d'emprisonnement pour outrage au tribunal en matière pénales parce qu'il ne s'était pas soumis à une ordonnance du tribunal; il a été emprisonné et l'on a constaté que du fait que ceux qui étaient condamnés pour outrage au tribunal en matières pénales ne pouvaient pas bénéficier de la libération conditionnelle, il ne pouvait pas bénéficier des auspices de la Commission nationale de la libération conditionnelle. Si je me trompe, monsieur le ministre, dites-le moi, mais il s'agit d'éclaircir cette question.

M. McIlraith: C'est exact, nous n'avions pas le droit d'intervenir. La Commission nationale de la libération conditionnelle n'avait pas de juridiction car l'accusé n'avait pas été condamné pour un délit commis sous le régime du Code pénal. Si vous voulez que nous examinions cette question avec les fonctionnaires du ministère de la Justice, nous pourrions garder cet article en suspens, jusqu'à ce que nous en fassions la vérification.

M. McCleave: Je crois que cette question est très importante; je demanderais qu'elle soit vérifiée d'ici demain soir.

M. McIlraith: Oui, on pourrait le faire.

L'article 94 (1) (b) et (ba) est réservé.

Les articles 94 (2) à 95 (2) inclusivement sont adoptés.

Article 96.

M. MacEwan: Quand les prévisions budgétaires du ministre ont été présentées à ce Comité, M. Street a laissé entendre que l'augmentation des effectifs permettrait aux membres de la Commission des libérations conditionnelles de visiter divers établissements et de faire des entrevues. Pourriez-vous nous donner de plus amples renseignements à ce sujet?

M. McIlraith: Oui, j'ai dit cela. Pourriez-vous préciser, s'il vous plaît, monsieur Street?

M. T. G. Street (Président, Commission nationale des libérations conditionnelles): J'ai bien dit cela. La Commission veut envoyer

[Texte]

ings in the various institutions across Canada. This is one of the reasons for the increase.

Mr. Gilbert: Mr. Street, when the Boards are set up is the number limited to two or more?

Mr. Street: Two or more.

Mr. Gilbert: What is going to be the practice? Are you just going to have two sit on a Board or are you hoping for a minimum of three?

Mr. Street: We will play it by ear, as they say. I am hoping that we can do it with two members because we can do it much more frequently if we use only two. We may find it necessary to use three. Two members would deal with most cases, but not serious cases—they would just have the hearing and the main decision would come back to Ottawa. Is that what you mean, sir?

Mr. Gilbert: Yes. Thank you very much.

Mr. Alexander: If just two members were in attendance at the hearing would they in turn have to review the whole set of circumstances with the other seven prior to the time they come to a decision?

Mr. Street: When we send a panel of two members I propose that the two members would dispose of most of the cases then and there and tell the applicant what the decision is and give reasons. As I say, if it is a case of murder, a dangerous sexual offender or a serious offence involving a life sentence—some of the more serious cases—I propose that they return to Ottawa and the decision with respect to those more serious cases will be made by a majority of the other members in Ottawa. But for most average run-of-the-mill cases, breaking and entering, theft, and things like that, I propose that the final decision be made by the two members there, and if they do not agree on a decision then it would still come back for a majority decision.

Mr. Alexander: Thank you.

Clause 96 agreed to.

On Clause 97.

Mr. MacEwan: I wonder if the Minister would give a short explanation and perhaps an example of how this applies.

Mr. McIlraith: I have a long winded explanation here, but perhaps I could give you an example. Suppose an inmate is sentenced to a term of one year for the attempt of theft

[Interprétation]

des gens dans diverses institutions au Canada et c'est une des raisons pour lesquelles nous demandons l'augmentation des effectifs.

M. Gilbert: Lorsque les Commissions seront établies, le nombre sera-t-il limité à un ou est-ce qu'on pourra en avoir plus?

M. Street: Deux ou plus.

M. Gilbert: Deux, ou même trois. Quelle sera la pratique?

M. Street: Nous jouons par oreille, comme on dit. Nous verrons comment les choses tourneront. Il est possible que nous pouvions nous contenter de deux membres, mais nous devrons peut-être en utiliser trois. Deux membres pourraient voir à la plupart des cas, à l'exception des cas graves. Ils présideraient à la séance, et la décision viendrait d'Ottawa. Est-ce bien cela que vous voulez savoir?

M. Gilbert: Oui, merci beaucoup.

M. Alexander: S'il n'y a que deux membres à la séance, devront-ils aussi revoir toutes les circonstances avec les sept autres avant d'arriver à une décision?

M. Street: Lorsque nous envoyons deux membres, je propose que les deux membres décident de la plupart des cas et donnent leurs raisons au réclamant. S'il s'agit d'un meurtrier ou d'un condamné à perpétuité, de pervers, des cas graves, je propose que on rapporte la décision à Ottawa et que ces décisions soient prises par tous les commissaires en majorité. Pour la plupart des cas, cambriolages, vols avec effraction et le reste, la décision finale pourra être prise par les deux commissaires déplacés. S'ils ne sont pas d'accord, ils pourront revenir nous demander une décision majoritaire.

M. Alexander: Je vous remercie.

Article 96 adopté.

Article 97.

M. MacEwan: Le ministre va-t-il donner une assez courte explication de cet article, ainsi qu'un exemple?

M. McIlraith: J'ai une explication assez longue. Je vais vous donner un exemple. Supposons qu'une personne est condamnée à une peine d'un an pour tentative de vol et est

[Text]

under the Criminal Code; he is also sentenced to imprisonment for six months to run consecutive to or concurrent with the first sentence for a breach of a provincial highway

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traffic act. The Parole Board's present jurisdiction is over inmates and an inmate is defined in Section 2 of the Act to mean a person imprisoned pursuant to or authorized to be imprisoned by an Act of the Parliament of Canada. Parole therefore cannot be granted to the inmate who is serving a sentence for a breach of the provincial enactment. Where the punishment under the provincial enactment is consecutive to the imprisonment under the Criminal Code the person must be recommitted under the provincial enactment after he has completed the parole granted under the Parole Act. Thus any parole granted by the Board is frustrated during the currency of the sentence imposed by the provincial enactment. It is to prevent that kind of thing and to give them jurisdiction over the whole parole.

Mr. MacEwan: According to this amendment this can be done only if the legislature of the province sanctions this.

Mr. McIlraith: That is right.

Clauses 97 to 100 inclusive agreed to.

On Clause 101

Mr. Woolliams: Is there any law or criteria laid down that a person has to serve a certain portion or percentage of their term of imprisonment? Suppose he gets three years for theft.

Mr. McIlraith: No, there is no such law.

Mr. Woolliams: What has been the rule of thumb that they have followed, and does it vary with circumstances?

Mr. McIlraith: To the extent that there is a rule of thumb, it has never been less than a third. There is a reference in the regulations to the one-third. I will have Mr. England read it. That is not the case of course with murderers.

Mr. Woolliams: What is the rule of thumb on murder now that it is a life sentence?

Mr. McIlraith: Ten years.

Mr. England: Where the minimum punishment is life imprisonment the Parole Board

[Interpretation]

également condamnée à une peine consécutive ou concurrente de six mois pour infraction à une loi provinciale sur la circulation. La juridiction actuelle de la Commission des libérations conditionnelles est sur les détenus. L'article 2 de la Loi définit un détenu comme une personne incarcérée en vertu d'une loi du Parlement du Canada. La liberté conditionnelle ne peut pas être accordée à une personne qui purge une peine à la suite d'une infraction à une loi provinciale. Lorsque la peine purgée à la suite d'une infraction à une loi provinciale est consécutive à une incarcération en vertu du Code criminel, la personne doit être condamnée de nouveau en vertu de la loi provinciale après la période de libération conditionnelle accordée en vertu de la Loi sur la mise en libération conditionnelle. Ainsi une libération conditionnelle accordée par la Commission est supprimée tant que la peine imposée en vertu de la loi provinciale n'est pas terminée. C'est pour prévenir ce genre de choses et pour donner à la Commission une entière juridiction sur tout le système des libérations conditionnelles.

M. MacEwan: En somme donc, d'après l'amendement, il faut la sanction de la province?

M. McIlraith: C'est exact.

Articles 97 à 100 inclusivement, adoptés.

Article 101.

M. Woolliams: Est-ce qu'il y a une loi au critère quelconque qui dit qu'une personne doit absolument servir une partie de sa peine de prison. Supposons qu'elle purge trois ans pour vol.

M. McIlraith: Non, il n'y a pas de loi de ce genre.

M. Woolliams: Quelle est la règle générale alors qu'on a adoptée? Ou est-ce que cela varie avec les circonstances?

M. McIlraith: S'il y a une règle générale, jamais moins d'un tiers de la peine. Le règlement parle du tiers.

M. England va nous donner lecture de ce règlement, si vous voulez. Cela ne concerne naturellement pas les meurtriers.

M. Woolliams: Quelle est la règle générale en ce qui concerne les meurtriers, maintenant qu'il y a la condamnation à vie?

M. McIlraith: Dix ans.

M. England: Lorsque la peine est une peine minimum d'emprisonnement à perpétuité, la

[Texte]

cannot recommend a parole and in any event the parole must be approved by the Governor in Council.

Mr. Woolliams: But it would have to be after ten years.

Mr. England: Before you can recommend.

Mr. Murphy: Do I understand that the age of the accused makes no difference?

Mr. England: There is no exception in that specific section of the regulation.

Mr. Murphy: That is in the regulations.

Mr. England: That is in the regulations passed by the Governor in Council.

Mr. Alexander: Notwithstanding health do the regulations still stand? We just heard, with respect to a severe sentence, that he must serve at least ten years before being subject to parole. Mr. Murphy asked, regardless of age, and I added, regardless of health.

Mr. McIlraith: I should have that cleared up. The Chairman has something to add.

Mr. Street: The regulations, Mr. Alexander, do provide that he shall serve as a general rule one third of his sentence before he is considered and his case is reviewed then. But the regulations also provide in Section 2 subsection (2) that

(2) Notwithstanding...

that

...in the opinion of the Board special circumstances exist, the Board may grant parole to an inmate before he has served the portion of his sentence of imprisonment required under subsection (1) to have been served before a parole may be granted.

In other words the Board has power to make exception to the usual regulations and it does so in approximately nine per cent of the cases. So to cover the situation you mentioned, or any other extraordinary situation, such as if a job comes up quickly, or before his eligibility, he can be released before that.

Mr. Alexander: And does this apply to the one-third term and the 10-year term?

Mr. Street: Not the 10-year term.

[Interprétation]

Commission ne peut pas recommander une libération conditionnelle et, de toute manière, la libération conditionnelle doit être approuvée par le gouvernement en conseil après dix ans.

M. Woolliams: Mais il faudrait que ce soit après dix ans.

M. England: Avant que l'on puisse recommander une libération conditionnelle.

M. Murphy: L'âge de l'accusé n'a rien à voir avec ça?

M. England: Ça ne fait aucune différence. Il n'y a aucune exception au règlement.

M. Murphy: C'est dans le règlement.

M. England: Le règlement adopté par le gouverneur en conseil.

M. Alexander: Les règlements s'appliquent toujours. Pour ce qui est des sentences plus longues, on a dit qu'il faut que les détenus aient purgé au moins dix ans avant d'être éligibles à la liberté conditionnelle, quelque soit leur âge de leur état de santé.

M. McIlraith: Il faudra que je précise cela. Le président a quelque chose à ajouter. Tirons la chose au clair.

M. Street: Le règlement prévoit que le détenu purgera en principe le tiers de sa peine après quoi il y a revision. Mais le paragraphe 2 de l'article 2 prévoit aussi que:

... qu'il existe des circonstances spéciales de l'avis de la Commission, celle-ci peut accorder la libération conditionnelle d'un détenu avant que celui-ci ait purgé la partie de sa peine qui doit être purgée en vertu du paragraphe 1 avant que le détenu puisse être admis à la mise en libération conditionnelle.

En d'autres mots, la Commission a le pouvoir de faire des exceptions à la règle générale et elle le fait dans environ 9 p. 100 des cas. Alors, pour tenir compte de la situation mentionnée ou de toute autre situation extraordinaire, s'il se présente un emploi rapidement ou avant son admissibilité, il peut être remis en liberté avant cela.

M. Alexander: Cela s'applique-t-il pour la peine du tiers et pour la peine de dix ans.

M. Street: Non, ça ne vaut pas pour la peine de dix ans.

[Text]

Mr. Alexander: I was more interested in that.

Mr. Street: There are no exceptions to that.

The Chairman: Shall proposed Section 10 carry?

Mr. Woolliams: I just wanted to ask one other question, if I might. I do not want to hold things up, but there is one thing I have always been concerned about and perhaps the Minister also is concerned about it.

I know what was done at the time, and I know why it was done when capital punishment was changed. But I have always felt that that puts a tremendous political onus on any Cabinet. It is just like when Leopold made his application to the Governor of Illinois; for years they played around with it and finally it was granted.

There are always political implications when the Cabinet—and I am not talking politics now—have the responsibility to approve parole for a person who has been convicted and sentenced to life imprisonment for non-capital murder. I have always felt that there must be some better way than putting that political onus on the Cabinet, because the Cabinet is subject to public opinion. A board or a court does not suffer the same way. Having made a decision, and if the person on parole commits another murder, it puts the Cabinet in a pretty dangerous and difficult position.

Mr. McIlraith: I recognize that difficulty, but you must remember the historical development of this. We did have capital punishment, and capital punishment was abolished on a trial term. There were persons for and against that action, and the undertaking was made at that time that the Parole Board would not easily parole murderers after they were convicted. What was worked out was a rule that these cases would not be considered for parole until the 10-year period had expired and that as an additional safeguard, they would require the approval of the Governor in Council as well as the recommendation of the Parole Board.

I am aware of the difficulty. I do not especially advocate that system, but I think in all the circumstances it was probably a reasonable solution to the problem.

Clause 101, proposed Sections 10 and 11 agreed to.

On Section 11A.—Consecutive and concurrent sentences.

[Interpretation]

M. Alexander: C'est ce qui m'intéressait le plus.

M. Street: Il n'y a pas d'exceptions.

Le président: L'article 10 est-il adopté?

M. Woolliams: Je voulais poser une autre question si on me le permet. Je ne voudrais pas retarder la séance, mais je suis toujours inquiet d'une chose et peut-être que cela préoccupe aussi le ministre.

Je sais ce qu'on a fait à ce moment-là et je comprends pourquoi on l'a fait lorsqu'on a modifié la peine capitale. Mais j'ai toujours cru que ceci rejetait une responsabilité politique très lourde sur le cabinet. C'est comme lorsque Léopold a présenté sa demande au gouverneur de l'Illinois et qu'après des années de tergiversations, elle lui fut accordée.

Il y a toujours des répercussions politiques—et je ne fais pas ici de politique—lorsque le cabinet a la responsabilité d'approuver la mise en liberté d'un criminel qui a été condamné à l'emprisonnement à vie pour meurtre au second degré. J'ai toujours cru qu'il y a une meilleure façon de procéder car le cabinet est soumis à l'opinion publique. Une commission n'est pas soumise aux mêmes pressions. Si la personne qui est mise en liberté commet un crime à ce moment-là, c'est le cabinet qui se trouve dans une impasse.

M. McIlraith: Je me rends compte de ce problème, mais il faut tenir compte du contexte historique. Il y avait autrefois la peine capitale, mais elle a été abolie à titre temporaire, à titre d'essai. Cette décision a eu ses partisans et ses adversaires, mais on s'est engagé à ce moment-là à ce que la commission des libérations conditionnelles ne puisse pas libérer trop facilement les meurtriers après leur condamnation. Les dispositions qui ont été prises prévoient que les détenus ne seront pas admissibles à la libération conditionnelle avant d'avoir purgé dix ans de leur peine et pour être mis en liberté, il faudra l'approbation du gouverneur en conseil de même que l'approbation de la Commission des libérations conditionnelles.

Je me rends compte du problème. Je ne suis pas très en faveur de ce système, mais si on tient compte des circonstances c'était sans doute la meilleure solution.

L'article 101 du Bill relatif aux articles 10 et 11 du Code est adopté.

Article 11A: Sentences consécutives et concurrentes.

[Texte]

Mr. Hogarth: Mr. McIlraith, this has the effect of compiling sentences all into one. Is that not so? When an inmate receives four years on one offence, plus four years on another offence to be served consecutively, this has the effect for the purposes of the Penitentiary Act and the Prisons and Reformatories Act of treating it as one sentence of eight years. Is that correct, sir?

Mr. McIlraith: Yes.

Mr. Hogarth: Well, what is the effect of that on inmates who are presently in institutions who have compiled their statutory and earned remission on the first sentence? That is to say, forget the earned remission, but for the first sentence of four years, say a man has already completed that and he does only three years of that sentence and he is going on to the second sentence. That man has completed his statutory remission on the first sentence. He is free on the first sentence. Now he goes on to the second sentence. Will this not have the effect of taking away that statutory remission that he has already received on the first sentence?

Mr. McIlraith: Not when read together with the other provision. Do you want that explained more fully?

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Mr. Hogarth: Yes.

Mr. England: To refer to your example, Mr. Hogarth, of four years plus four years consecutive. There is a view that statutory remission granted on the first four years vests after that period has elapsed. That is your question.

Mr. Hogarth: Yes.

Mr. England: What will happen to that?

Mr. Hogarth: Yes.

Mr. England: We have to remember that statutory remission is subject to forfeiture. It is subject to good behaviour, so it is not an absolute right vested in the inmate in the first instance. In that particular case, he will then have an eight-year sentence and he will get statutory remission based on the eight years. This will be equal to the statutory remission of two four-year sentences. But there will be no vesting of statutory remission in the manner that it is now vested.

Mr. Hogarth: This is a misconception about the actual practice in the penitentiary. Where

[Interprétation]

M. Hogarth: L'effet de tout ceci, c'est de cumuler toutes les peines en une seule. Lorsqu'un détenu est condamné à une peine de quatre ans pour un délit, plus quatre autres années pour une autre délit, les deux sentences devant se succéder, aux termes de la Loi sur les pénitenciers et de la Loi sur les prisons et les maisons de correction, cela est considéré comme une seule peine de huit ans, n'est-ce pas?

M. McIlraith: Oui.

M. Hogarth: Quel est l'effet de ceci sur les détenus qui sont actuellement dans des institutions et qui ont droit à une remise de peine pour la première peine de quatre ans? Mettons qu'il a terminé sa première peine en ayant déjà purgé trois ans. Il a donc terminé sa première peine. Il passe ensuite à la seconde. Est-ce que ceci n'a pas l'effet de faire disparaître cette remise de peine tant il a bénéficié pour sa première condamnation?

M. McIlraith: Non, pas si on utilise les autres dispositions de la loi. Voulez-vous des explications plus complètes?

M. Hogarth: Oui.

M. England: Pour en revenir à votre exemple de deux peines consécutives de quatre ans. On pense que les remises statutaires accordées pour les quatre premières années sont acquises après la première partie de la peine. C'est bien votre question, n'est-ce pas, monsieur Hogarth?

M. Hogarth: Oui.

M. England: Qu'est-ce qu'il va advenir de ces remises?

M. Hogarth: Oui.

M. England: N'oubliez pas que l'on peut perdre la remise statutaire. Elle est toujours accordée sous réserve de bonne conduite. Ce n'est pas un droit absolu. Dans ce cas, il aura donc une peine de huit ans. Il aura une remise statutaire d'après la peine de huit ans qui sera égale à la remise de deux peines de quatre ans. Il n'y aura pas de remise comme c'est actuellement le cas.

M. Hogarth: On se fait des idées fausses sur ce qui se passe réellement dans les péniten-

[Text]

a prisoner or inmate figures that after he has served three years and his statutory remission has not been affected, that is, it has not been taken from him, your suggestion is that when he starts the second sentence of four years, he is actually also still on the statutory remission of the first?

Mr. England: No, it is not. I am saying that at the present time it is generally accepted that his statutory remission has been vested in him in respect of that first sentence.

Mr. Hogarth: Yes.

Mr. England: This will change, and he will get statutory remission based on eight years.

Mr. Hogarth: I am sorry I am so dense.

Mr. McIlraith: He will not serve more than he could under the old legislation.

Mr. Hogarth: That is assured, is it? This is what I am concerned with. He cannot serve any more time than he could under the present provisions of the law?

Mr. England: That is right. But in addition this corrects an inequity in that there is no authority that I am aware of to credit earned remission on one sentence to another sentence that follows. This corrects that. In other words, a benefit does accrue to the inmate, in that his earned remission on his first four-year sentence will be carried forward on his second four-year sentence.

Mr. Hogarth: There is only one other comment I have to make. Suppose after the imposition of three consecutive sentences, four, four and four, just for an example, one of these sentences is set aside on habeas corpus—that is, one warrant of committal is set aside on habeas corpus—will this legislation have any effect then?

Mr. England: That is very difficult. It could have an effect. If he is not able to be released from the penitentiary, it is my understanding that the writ of habeas corpus would not have effect.

Mr. Hogarth: No, but this would only be for the one offence, you see. Would that make all sentences fall if they are now a sentence of 12 years?

Mr. England: Well, first of all this is not applicable to the Criminal Code.

Mr. Hogarth: I see.

Mr. England: Therefore I do not see any hindrance to him taking his writ of habeas

[Interpretation]

tiers. En fait, dans le cas d'un détenu qui a purgé trois ans de prison et qui croit que sa remise de peine ne lui a pas été enlevée, vous dites que lorsqu'il commence à purger sa seconde peine de quatre ans, il bénéficie encore de la remise de sa première peine?

M. England: Non, je disais qu'à l'heure actuelle, il est généralement accepté que la remise statutaire lui est accordée à l'égard de la première peine.

M. Hogarth: Oui.

M. England: Cela va changer. Sa remise de peine statutaire sera fondée sur huit ans.

M. Hogarth: Je m'excuse de comprendre si difficilement.

M. McIlraith: Il ne fera pas plus de temps qu'en vertu de l'ancienne loi.

M. Hogarth: Bref, si j'ai bien compris il ne restera pas plus longtemps en prison qu'il ne l'aurait été autrefois?

M. England: Exact. Mais cela corrige en plus une iniquité car, autant que je sache, rien ne nous permet de créditer sur une autre peine la remise déjà acquise. Bref, il y a un avantage pour un détenu; c'est que la remise qu'il a acquise pour les quatre premières années pourrait être reportée sur la seconde.

M. Hogarth: Supposons qu'un accusé se voit imposer trois peines consécutives de quatre ans, et qu'une des peines est supprimée à la suite d'un *habeas corpus*—c'est-à-dire qu'un mandat d'incarcération est mis de côté en vertu d'un *habeas corpus*—est-ce que cette loi aura alors un effet?

M. England: Cela pourrait avoir un effet. S'il ne peut pas être libéré du pénitencier, je crois que l'*habeas corpus* ne s'appliquera pas.

M. Hogarth: Mais ce serait au titre d'un des délits seulement. Est-ce que toutes les peines tomberaient si c'était considéré comme une peine de douze ans?

M. England: Cela ne s'applique pas au Code criminel.

M. Hogarth: Je vois.

M. England: Je ne vois pas ce qui peut l'empêcher de se pourvoir en appel d'un *ha-*

[Texte]

corpus action. The question is, if he takes this habeas corpus action, he will not be able to take it during the currency of the two terms of imprisonment that are not challenged.

Mr. Street: The three sentences, I think, would be separate for your purposes. It would end up then, if one of those was defeated on habeas corpus, that he would be left with two four-year sentences to serve.

Mr. Hogarth: The two others to serve, yes.

Mr. Street: If that is what you had in mind.

Mr. Hogarth: Yes. He would have to wait until he had served the first lawful one, before he could attack the second one?

Mr. Street: They are three separate distinct sentences, but they would be considered an aggregate sentence for the purposes of remission and parole.

Mr. Hogarth: I see. Therefore the net effect of this is that kaleidoscoping of these sentences applies only for the purposes of the Prisons and Reformatories Act and the Penitentiary Act?

Mr. Street: That is right.

Clause 101, proposed Sections 11A, 11B, 12 and 13 agreed to.

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On Clause 101, proposed section 14—Apprehension.

Mr. McIlraith: In Section 14 where you see the words “signed by him”—that is line 20. We will strike out the words “signed by him” and just leave in “warrant in writing”. I have that in the terms of a formal motion, if someone would move it.

Mr. Hogarth: I move: That Bill C-150 be amended by striking out line 20 on page 109 thereof and substituting the following: “Warrant in writing.”

Amendment agreed to.

Mr. Alexander: Would you explain.

Mr. McIlraith: We took out the words “signed by him”. It now reads:

(1) If any parole is revoked or forfeited, the Board or any person designated by the Board may, by a warrant in writing, authorize the apprehension of the paroled inmate.

[Interprétation]

beas corpus. S'il décide de le faire il ne pourra cependant pas le faire pendant que durent les deux peines qui ne font pas l'objet de l'appel.

M. Street: Vous considérez les trois peines séparément. Si l'une d'elles est supprimée à la suite d'un *habeas corpus*, le détenu n'aura que deux peines de quatre ans à purger.

M. Hogarth: Les deux autres peines, oui.

M. Street: Si c'est ce à quoi vous pensiez.

M. Hogarth: Il devrait finir sa première peine avant d'attaquer la seconde?

M. Street: Ce sont trois peines séparées, mais qui sont considérées comme une seule à l'égard de la remise de peine et de la libération conditionnelle.

M. Hogarth: Je vois. Cela veut dire que l'amalgamation des trois peines ne s'applique qu'aux fins de la Loi sur les prisons et les maisons de correction et de la Loi sur les pénitenciers?

M. Street: Exact.

Article 101 du Bill relatif aux articles 11A, 11B, 12 et 13 du Code adopté.

Article 101 du Bill, relatif à l'article 14—Appréhension

M. McIlraith: A l'article 14 où l'on voit les mots «signé par lui»—c'est à la ligne 20. Nous allons supprimer les mots «signé par lui» et ne laisser que «mandat par écrit». J'ai ceci dans une motion dans les formes si quelqu'un veut la proposer.

M. Hogarth: Je propose: Que le bill C-150 soit modifié par le retranchement de la ligne 26, page 109, et son remplacement par:

«mandat écrit, autoriser»

La modification est adoptée.

M. Alexander: Pourriez-vous apporter quelques explications?

M. McIlraith: Nous avons éliminé l'expression «signé par elles». On y lit maintenant:

(1) Si une libération conditionnelle est révoquée ou frappée de déchéance, la Commission ou toute personne qu'elle désigne peuvent, au moyen d'un mandat écrit, autoriser l'arrestation du détenu à liberté conditionnelle.

[Text]

A warrant in writing may be signed by the Board, but he may not be the one who is out doing the apprehending.

Mr. Alexander: That is a satisfactory explanation.

Clause 101, proposed section 14 (1) as amended agreed to.

Clause 101, proposed section 14 (2) agreed to.

Clause 102, proposed section 16 (1) and (2) agreed to.

Clause 103 (1), (2) and (3) agreed to.

On Clause 104 proposed section 20—Evidence

Mr. McIlraith: There is an amendment there. Please note line 26 "Board to suspend parole or to authorize the apprehension and commital". We strike out the words "and commital" because the Parole Board has no authority to order the commital of anybody.

The Chairman: Can we have an amendment to that effect?

Mr. Hogarth: I move that Bill C-150 be amended by striking out line 26 on page 112 thereof and substituting the following: "the apprehension of an"

Amendment agreed to.

Clause 104, proposed Section 20 as amended agreed to.

On Clause 105, proposed Section 17 (1) and (2)

Mr. McIlraith: There is something I feel obligated to mention to the board. We are not putting forward the claim to have the right to re-commit a person where their parole has been suspended. That is done by the magistrate. Some of the magistrates, indeed a great many of them, complain about this because they have no jurisdiction for making any independent decision; they merely are, if I may use the term fully respectfully, rubber stamps in that operation. They would prefer to be free of it. On the other hand, the Parole Board has never been given any authority to commit and we do not especially assert any right to do it. Now I pass this on to you.

The Chairman: Mr. Woolliams.

Mr. Woolliams: There are likely to be many applications for habeas corpus.

[Interpretation]

Un mandat écrit peut être signé par la Commission mais elle peut ne pas être celle qui fait l'arrestation.

M. Alexander: L'explication me paraît satisfaisante. L'article 101 du Bill, relatif au nouvel article 14(1) du Code, modifié est adopté.

L'article 101 du Bill relatif au nouvel article 14 (2) du Code est adopté.

L'article 102 du bill relatif au nouvel article 16(1) et (2) du Code est adopté.

L'article 103 (1), (2) et (3) est adopté.

Sur l'article 104 du bill relatif au nouvel article 20—Preuve.

M. McIlraith: Il y a une modification ici. Veuillez remarquer à la ligne 26 «par la Commission pour suspendre la libération conditionnelle ou autoriser l'arrestation et l'incarcération». Nous supprimons «et l'incarcération», parce que la Commission de libération conditionnelle n'a pas le droit d'ordonner l'incarcération de quiconque.

Le président: Peut-il y avoir une modification à cet effet?

M. Hogarth: Je propose que le bill C-150 soit modifié par le retranchement de la ligne 26 à la page 112 et leur remplacement par ce qui suit:

«l'arrestation d'un».

La modification est adoptée.

L'article 104 du bill relatif à l'article 20 modifié du Code est adopté.

Sur l'article 105 du bill relatif à l'article 17 (1) et (2)—

M. McIlraith: Je me sens obligé de mentionner quelque chose à la commission. Nous ne voulons pas avoir le droit de renvoyer une personne dont la liberté conditionnelle a déjà été suspendue. C'est fait par un juge. Quelques juges, en fait plusieurs d'entre eux, se sont plaints de cela parce qu'ils n'ont pas le droit de prendre seuls des décisions. Ils agissent à peine, si je peux me permettre l'expression, d'estampeurs, dans cette affaire. Ils préféreraient s'en libérer. Par contre, la Commission des libertés conditionnelles n'a jamais joui du droit de se compromettre et nous ne donnons spécialement pas le droit de le faire. Je vous laisse prendre la décision.

Le président: Monsieur Woolliams.

M. Woolliams: Vous risquez d'avoir plusieurs demandes de «Habeas Corpus».

[Texte]

Mr. McIlraith: I thought I should mention that point out of fairness to the magistrates who raised the question. We will accept the authority to put it on, but we are not asking for it.

Clause 105, proposed Sections 17(1) and (2) agreed to.

Clause 106 agreed to.

On Clause 107, proposed Section 22(3) and (4)

Mr. McIlraith: On page 115 I want to strike out lines 2 and 3 and substitute the following:

credited with statutory remission, is convicted in dis-

The Chairman: Can we have an amendment to that effect?

Mr. McIlraith: We also wish to add a sub-clause (5), which reads as follows:

Statutory remission credited pursuant to this section to a person who is sentenced or committed to penitentiary for a fixed term shall be reduced by the maximum amount of statutory remission with which that person was at any time credited under the *Prisons and Reformatories Act* in respect of a term of imprisonment that he was serving at the time he was so sentenced or committed.

Mr. England: The case may arise where an inmate is serving a one-year term of imprisonment in a provincial institution. As soon as he is admitted to that institution and in accordance with the new provisions contained in this Act, he will be granted statutory remission. If he is again charged with an offence while he is still serving that term of imprisonment and sentenced for example to three years, he will be sentenced to a penitentiary and he will have to move from the provincial institution to the penitentiary.

In accordance with the amendment to the Parole Act which we have discussed on multiple sentences, he will then be serving a single sentence which will be the aggregate of the unexpired portion of the term of imprisonment that he had in the provincial prison plus the three years, and he will therefore on being admitted to the penitentiary be granted statutory remission on the whole of that single new sentence. In order to avoid the duplication of the grant of statutory remission, it is necessary to take away all the statutory remission that he was granted under the *Prisons and Reformatories Act* but of

[Interprétation]

M. McIlraith: J'ai cru devoir mentionner ce point d'honnêteté aux magistrats qui ont soulevé cette question. Nous accepterons ce pouvoir mais nous n'en faisons pas la demande.

L'article 105 du Bill relatif à l'article 17 (1) et (2) du Code est adopté.

L'article 106 du Bill est adopté.

Sur l'article 107 du Bill relatif à l'article 22 (3) et (4) du Code.

M. McIlraith: Je voudrais retrancher les lignes 2 et 3, à la page 115, et les remplacer par ce qui suit:

«-ficié d'une réduction statutaire de peine, est»; et

Le président: Peut-il y avoir une modification à cet effet?

M. McIlraith: Nous désirons aussi ajouter l'alinéa (5) qui se lit ainsi:

La réduction statutaire de peine accordée conformément au présent article à une personne qui est condamnée ou envoyée dans un pénitencier pour une période fixée doit être diminuée de la réduction statutaire de peine maximum dont a bénéficié à un moment quelconque cette personne en vertu de la *Loi sur les prisons et les maisons de correction* pour une peine d'emprisonnement qu'elle purgeait au moment où elle a été condamnée ou envoyée dans un pénitencier.»

M. England: Le cas peut se produire pour un détenu qui purge une peine d'emprisonnement d'un an dans une institution provinciale. Dès que cette personne entre dans l'institution en question, et en vertu des nouvelles dispositions de la présente loi, il bénéficiera d'une réduction de peine statutaire. S'il est de nouveau mis en accusation, et s'il purge encore cette peine et qu'il est condamné à trois ans, il sera condamné au pénitencier. Il sera obligé donc de passer de l'institution provinciale au pénitencier. Conformément à la modification de la Loi sur la libération conditionnelle dont nous avons discuté des sentences multiples, il ne purgera alors qu'une seule et unique peine qui équivaudra à la partie non purgée de la peine d'emprisonnement qu'il purgeait dans la prison provinciale plus trois ans.

En conséquence, dès qu'il sera incarcéré au pénitencier, il pourra bénéficier d'une réduction de peine statutaire au titre de cette peine nouvelle. Pour éviter que l'on ne donne pas deux fois la même réduction de peine statutaire, il est nécessaire de supprimer toutes les réductions de peine statutaires dont il béné-

[Text]

course he carries forward the amount of remission that he was granted. It is just a section to avoid the duplication of the grant of statutory remission during the period that the man serves in the provincial institution.

Mr. Hogarth: I move that clause 107 of Bill C-150 be amended as follows:

(a) by striking out lines 2 and 3 on page 115 and substituting the following:

“credited with statutory remission, is convicted in dis—”

(b) by striking out line 19 on page 115 and substituting the following:
“mitted.

(5) Statutory remission credited pursuant to this section to a person who is sentenced or committed to penitentiary for a fixed term shall be reduced by the maximum amount of statutory remission with which that person was at any time credited under the *Prisons and Reformatories Act* in respect of a term of imprisonment that he was serving at the time he was so sentenced or committed.”

Amendment agreed to.

Mr. Alexander: I note reference to “earned remission”. Would you give me an indication of where to find statutory remission, or perhaps give me an interpretation of it.

Mr. A. J. MacLeod (Commissioner, Canadian Penitentiary Service): It is a provision in the Penitentiary Act, Mr. Alexander, which provides that when a person is admitted to penitentiary he is to be credited forthwith with one-quarter of the term of the sentence that he is about to serve. He gets that automatically and he is liable to lose all or any part of it by way of judgement for disciplinary offences within the institution.

Earned remission, on the other hand—he earns through his application to his work in the institution—amounts to three days a month. This is not liable to forfeiture for any reason. The sum total of one quarter of the

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sentence, which is made up of statutory remission and the three days of his earned remissions, comes to a fraction more than one-third of his sentence.

[Interpretation]

ficiait aux termes de la loi sur les prisons et les maisons de correction, mais il conserve néanmoins la remise de peine dont il a pu bénéficier. Il s'agit donc d'éviter que l'on accorde deux fois la même réduction de peine statutaire pendant la période de temps qu'un homme passe dans une prison provinciale.

M. Hogarth: Je propose que l'article 107 du bill C-150 soit modifié comme suit:

a) par le retranchement des lignes 2 et 3, à la page 115, et leur remplacement par ce qui suit:

«ficié d'une réduction statutaire de peine, est»

; et

b) par le retranchement de la ligne 23, à la page 115, et son remplacement par ce qui suit:

«moment où l'infraction a été commise.

(5) La réduction statutaire de peine accordée conformément au présent article à une personne qui est condamnée ou envoyée dans un pénitencier pour une période fixée doit être diminuée de la réduction statutaire de peine maximum dont a bénéficié à un moment quelconque cette personne en vertu de la *Loi sur les prisons et les maisons de correction* pour une peine d'emprisonnement qu'elle purgeait au moment où elle a été condamnée ou envoyée dans un pénitencier.»

La modification est adoptée.

M. Alexander: Je remarque que vous parlez de réduction de peine méritée. Pourriez-vous m'indiquer où l'on trouve «réduction de peine statutaire» ou peut-être m'en donner une interprétation.

M. A. J. MacLeod (Commissaire, Service des pénitenciers canadiens): Une disposition de la Loi sur les pénitenciers prévoit que lorsqu'une personne est admise à un pénitencier, on lui remet à l'avance un quart de la sentence qu'il doit purger au pénitencier. Il l'obtient automatiquement, mais il risque toutefois de perdre cela en partie ou en entier s'il est reconnu coupable d'infractions à la discipline à l'intérieur de l'institution.

Les réductions de peine méritées, d'autre part, il les gagne par son travail dans l'institution, à raison de trois jours par mois. Et ceci ne peut pas lui être enlevé pour quelque raison que ce soit. Il y a donc un total équivalent à un quart de la sentence qui constitue la réduction de peine statutaire, et les trois jours de réduction de peine méritée, représentent un peu plus qu'un tiers de la sentence.

[Texte]

Clause 107 as amended agreed to.

Clause 108 agreed to.

On Clause 109.

Mr. McIlraith: We have a small amendment on page 117 in line 13, where the word "period" is used, we substitute the term "fixed term" instead of the word "period"; and in the next line, after "for which he has been sentenced," we add the words "or committed". A committal by a magistrate for a breach of parole is not a sentence. This would clarify, and make sure of, the prisoner's rights.

The Chairman: Mr. Deakon?

Mr. Deakon: I move: That Bill C-150 be amended by striking out lines 13 and 14 on page 117 thereof and substituting the following:

"quarter of the fixed term for which he has been sentenced or committed as time off subject to"

Amendment agreed to.

Clause 109, proposed Section 17 subsections (1), (2), (3), (4), (5) agreed to.

Clause 109, proposed Section 18, subsections (1) and (2) agreed to.

On Clause 109, proposed Section 19—*Term to include period of remission*

Mr. Hogarth: I move: That Bill C-150 be amended by striking out line 12 on page 119 thereof and substituting the following:

"one-quarter of the portion of the fixed term to which he was sentenced that is"

Amendment agreed to.

Clause 109, Section 19, as amended agreed to.

Clauses 110 to 114 inclusive agreed to.

On Clause 115—

Mr. Hogarth: Mr. McIlraith, do you know why British Columbia has reduced the age to 22 years from 23 for definite and indefinite sentences?

Mr. McIlraith: I have forgotten the reason, to be quite frank. But just a moment. They asked for it. I do know that.

Mr. Hogarth: The age was previously 23, and they only changed it by one year.

[Interprétation]

L'article 107 du Bill, tel que modifié est adopté.

L'article 108 est adopté.

Sur l'article 109.

M. McIlraith: A la page 117, il y a une légère modification. De la ligne 13 où figure le mot «période», nous le remplaçons par l'expression «période fixe», au lieu de période. A la ligne suivante, on ajoute après l'expression «à laquelle elle a été condamnée», «ou incarcérée». Une incarcération par un magistrat pour une violation de libération conditionnelle n'est pas une sentence. Cela éclaircirait et assurerait les droits du prisonnier.

Le président: Monsieur Deakon?

M. Deakon: Je propose: Que le Bill C-150 soit modifié par le retranchement de la ligne 14, page 117 et son remplacement par:

«période fixée à laquelle elle a été condamnée ou pour laquelle elle a été incarcérée.»

La modification est adoptée.

L'article 109 du Bill relatif à l'article 17 (1), (2), (3), (4), et (5) du Code est adopté.

L'article 109 du Bill relatif à l'article 18 (1) et (2) du Code est adopté.

Sur l'article 109 du Bill relatif à l'article 19 du Code—Période comprise dans la réduction de peine.

M. Hogarth: Je propose: Que le bill C-150 soit modifié par le retranchement de la ligne 12, page 119, et son remplacement par ce qui suit:

«partie de la période fixe à laquelle il a été condamné lui restant alors à»

La modification est adoptée.

L'article 109 du Bill relatif à l'article 19 du Code tel que modifié est adopté.

Les articles 110 à 114 inclusivement du Bill sont adoptés.

Sur l'article 115 du Bill—

M. Hogarth: Monsieur McIlraith, savez-vous pourquoi la Colombie-Britannique a abaissé l'âge de 23 ans à 22 ans pour les peines dites indéfinies;

M. McIlraith: Pour être franc, j'en ai oublié la raison. Mais attendez un peu. Ils l'ont demandé, je le sais.

M. Hogarth: L'âge était auparavant de 23 et ils ne l'ont changé que d'un an.

[Text]

Mr. McIlraith: Yes.

Mr. Street: I did not find out exactly why, but I understand they had a little too many and they thought these youths were a little
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too old for their program. They thought 22 was a more realistic age.

This is not official; I am just giving you my understanding.

Mr. Hogarth: I appreciate that.

Mr. Street: That top age of 23 was just a little too old for their program.

Mr. Hogarth: Thank you.

Clause 115 agreed to.

The Chairman: We have Clause 94 left, which we stood. Is there any possibility of completing it, too? It is the one on which Mr. McCleave had a query. That is on page 101, Mr. McCleave.

Mr. McCleave: I suggest that this could be equally served by deleting the word "criminal." Presumably that might help somebody who has been put in jail for a very minor infraction, or misbehaviour in court, perhaps by a magistrate who became petulant. Would that not help there? You would get at the person who was given the term for the greater offence of contempt but you could also perhaps help the fellow who may have been put away for a minor amount of contempt.

I understand from my friend, Mr. Woolliams, that criminal contempt is a phrase used in the English law, but I have not found it in my reading of Crankshaw's annotations for the Canadian Criminal Code. That is the reason I raise the question.

The Chairman: Mr. Woolliams?

Mr. Woolliams: As an example of criminal contempt in the common law—and I think this is what the Minister was driving at—let us consider the following: Suppose you go before a High Court in reference to some special writ: whether it be *habeas corpus*, *certiorari* or prohibition. There is an order turning that application down, and referring the matter back to the magistrate so that the hearing can proceed forthwith. The lawyer then advises his client to pursue another procedure, contrary to the order. That has always been defined in Halsbury's *Laws of England* as basically criminal contempt.

Civil contempt, as I understand it, arises where, say, there is an order made for alimony and the husband is not carrying it out.

[Interpretation]

M. McIlraith: Oui.

M. Street: Je n'ai pas vraiment compris pourquoi mais je crois qu'ils en avaient trop et qu'ils ont pensé que ces jeunes étaient un peu trop vieux pour leur programme. Ils ont pensé que 22 ans était un âge un peu plus réaliste. Je ne donne qu'une interprétation.

M. Hogarth: Je vous remercie.

M. Street: 23 ans comme âge maximum, c'était un peu trop vieux pour leur programme.

M. Hogarth: Merci.

L'article 115 du Bill est adopté.

Le président: Nous avons fait réserver l'article 94 du Bill. Y a-t-il possibilité d'en compléter l'étude? C'est l'article à propos duquel monsieur McCleave a émis quelques doutes. C'est à la page 101, monsieur McCleave.

M. McCleave: Je crois qu'on pourrait enlever le mot «criminel». Cela pourrait aider ceux qui ont été incarcérés pour une infraction mineure ou de mauvaise conduite à la cour parce qu'un magistrat est peut-être devenu irritable. Est-ce que cela n'aiderait pas dans de tels cas? Vous touchez la personne qui reçoit une sentence à la suite d'une grave infraction, mais vous pourriez aider le type qui a pu être emprisonné pour des raisons moins graves. Je crois comprendre que, d'après M. Woolliams, l'outrage criminel est une expression employée dans la loi britannique mais je ne l'ai pas trouvée dans les annotations de Crankshaw qui a trait au Code criminel du Canada. Voilà pourquoi je souleve cette question.

Le président: Monsieur Woolliams.

M. Woolliams: Comme exemple d'outrage criminel dans le *Common Law*, et je crois que c'est ce à quoi le ministre en arrivait, examinons ce qui suit: Supposons que vous comparaissez devant la Cour suprême, sous un mandat quelconque, que ce soit *habeas corpus*, *certiorari* ou interdiction. Une ordonnance renverse cette application et renvoie la chose au magistrat du tribunal pour que l'audience se poursuive immédiatement. L'avocat conseille alors à son client d'entreprendre une autre procédure, contrairement à l'ordonnance. Cette démarche a toujours été définie dans *Laws of England* comme un outrage criminel.

L'outrage civil, comme je l'ai compris, existe lorsqu'il y a un mandat pour une pension alimentaire et que le mari ne s'en occupe

[Texte]

That may be just a civil contempt of the Court.

The penalties may be similar.

Mr. McIlraith: If I may add something, it turns on Section 8 of the Criminal Code which states:

8. Notwithstanding anything in this Act or any other Act no person shall be convicted

(a) of an offence at common law,

(b) of an offence under an Act of the Parliament of England,...

Then at the conclusion of that:

but nothing in this section affects the power, jurisdiction or authority that a court, judge, justice or magistrate had, immediately before the coming into force of this Act, to impose punishment for contempt of court.

Then the contempt of court is a committal. The most frequent application of Section 8 is a committal to imprisonment for the common law offence of criminal contempt of court. Where this occurs the person in prison does not come within the present definition of "inmate", of course, under our legislation.

The common law offence is criminal contempt.

The Chairman: Mr. McCleave?

Mr. McCleave: May I point out one further fact? In the forms—the warrants for commitment by a magistrate for contempt—they do not use the phrase "criminal contempt". I suggest that if we use just the word "contempt" we are achieving exactly the purposes of the Department or the officials. Neither would any court get into the difficulty of having to research ancient law to find out whether, in that jurisdiction, they were restricted to very specific cases which are decided before Canada was formed.

Mr. McIlraith: I think your point about contempt, including criminal contempt, is well taken. Perhaps you would care to move it?

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The Chairman: Mr. MacGuigan?

Mr. MacGuigan: The only concern I have is one of constitutional jurisdiction. I would be concerned if that you take the word "criminal" out this might be held to be an attempt unwarrantedly to extend federal jurisdiction over an area which is really not under federal

[Interprétation]

pas. C'est un outrage au tribunal en matière civile. Les peines peuvent être semblables.

M. McIlraith: Messieurs, si je puis me permettre d'ajouter un mot à propos de l'article 8 du Code criminel qui stipule que:

Nonobstant toute disposition de la présente loi ou de quelque autre loi nul ne peut être déclaré coupable

a) d'une infraction au droit commun,

b) d'une infraction tombant sous le coup d'une loi du Parlement d'Angleterre

Et à la fin de cet article

... rien au présent article n'atteint le pouvoir, la juridiction ou l'autorité qu'une cour, un juge, juge de paix ou magistrat possédait, immédiatement avant l'entrée en vigueur de la présente loi d'imposer une peine pour outrage au tribunal.

Alors l'outrage au tribunal équivaut à une incarcération. L'application la plus fréquente de l'article 8 est le mandat d'emprisonnement pour une infraction au code civil, d'outrage criminel au tribunal. En l'occurrence, la personne qui est détenue, n'entre pas dans la définition normale d'un «détenu» en vertu de notre loi. L'infraction au code civil est un outrage criminel.

Le président: Monsieur McCleave.

M. McCleave: Puis-je souligner un autre fait? Dans les formules de demande d'incarcération par un magistrat pour cause d'outrage, on n'emploie pas l'expression «outrage criminel». Je pense que si nous n'employons que le mot «outrage», nous faisons exactement ce que le Ministère et les agents désirent. Aucun tribunal n'a jamais eu à chercher dans le droit antique pour trouver si dans cette juridiction, ils se limitaient à des cas bien spécifiques qui étaient décidés, avant que le Canada existe en tant que tel.

M. McIlraith: Je crois que votre exemple relatif à l'outrage, y compris l'outrage criminel est bien choisi. On pourrait proposer de passer à la proposition.

Le président: Monsieur MacGuigan?

M. MacGuigan: Ce qui m'intéresse toutefois, est de juridiction constitutionnelle. Si vous supprimez le terme «criminel», cela pourrait passer pour une tentative destinée à étendre la juridiction fédérale à un domaine qui ne relève pas de la juridiction fédérale et

[Text]

jurisdiction, and that this might lead to courts striking down a number of sections in the Act. I doubt if federal jurisdiction would extend to civil contempt. It clearly does extend to criminal contempt. I think this might present a problem subsequently.

Mr. Hogarth: Mr. Chairman, I agree entirely with Dr. MacGuigan. If you strike the word "criminal" out of that section you are going to end up with the National Parole Board having jurisdiction over something which is entirely the prerogative of the provinces. I do not think we can go that far.

The Chairman: Is it the wish of the Committee that this clause be passed?

Mr. McCleave: I think that it could be amended anyway, Mr. Chairman.

The Chairman: Will you please put the amendment, Mr. McCleave?

Mr. McCleave: I move that the word "criminal" be deleted from line 15 on page 101.

The Chairman: Will you put that in writing please, Mr. McCleave.

Mr. Woolliams: I really do not think it is going to make that much difference. It is going to be subject to interpretation, and the word "contempt" if it was used there would be interpreted to mean in criminal jurisdiction. I do not think the word "criminal" does any harm. I am at a loss to know at this moment whether I should support my good friend or not.

Mr. Hogarth: Very few times you are at a loss.

The Chairman: It has been moved by Mr. McCleave that the word "criminal" be deleted from line 15 on page 101. All in favour of the amendment. All opposed.

Amendment negatived.

Clause 94 agreed to.

Mr. Woolliams: I wonder, Mr. Chairman, if you could outline what is left now for tomorrow.

The Chairman: It is my recollection that only the abortion clauses are left. Mr. Gilbert, do you have a witness tomorrow?

Mr. Gilbert: Yes, I do, Mr. Chairman. He will be here at 9:30 a.m. and will take approximately an hour and a half.

The Chairman: Thank you very much, Mr. Alexander.

[Interpretation]

cela pourrait amener les tribunaux à faire tomber un certain nombre d'articles dans la Loi, vraiment. Je doute fort que la juridiction fédérale s'étende aux cas d'outrages pour des questions civiles. Je crois que cela pourrait poser des problèmes plus tard.

M. Hogarth: Monsieur le président, je suis tout à fait d'accord avec M. MacGuigan. Si on enlève l'expression «criminelle» de l'article, la Commission des libérations conditionnelles aura des pouvoirs dans des secteurs qui relèvent exclusivement des provinces. Je ne crois pas que nous puissions aller si loin.

Le président: Le comité est-il d'avis que cet article soit adopté?

M. McCleave: Je vais tout de même mettre l'amendement aux voix.

Le président: Veuillez mettre l'amendement aux voix monsieur McCleave.

M. McCleave: Je propose que le mot «criminel» soit supprimé de la ligne 15 à la page 101.

Le président: Pourriez-vous l'écrire, s'il vous plaît, monsieur McCleave?

M. Woolliams: Cela ne fera pas tellement de différence. Cela sera sujet à interprétation et si le mot «outrage» était utilisé, il serait interprété dans le sens de la juridiction criminelle. Je ne crois pas que le terme «criminel» soit dangereux. Je n'arrive pas à savoir en ce moment, si je devrais donner mon appui ou pas.

M. Hogarth: Cela vous arrive très peu souvent.

Le président: M. McCleave a proposé que l'on supprime le mot «criminel» de la ligne 15 à la page 101. Tous ceux qui sont en faveur de l'amendement? Tous ceux qui sont contre?

La modification est rejetée.

L'article 94 du Bill non modifié est adopté.

M. Woolliams: Monsieur le président, pourriez-vous nous résumer ce qui reste à faire demain.

Le président: Je crois qu'il ne reste que les articles qui touchent à l'avortement. Monsieur Gilbert, avez-vous un témoin pour demain?

M. Gilbert: Le témoin va être ici à 9 heures et demie. Il va prendre environ une heure et demie.

Le président: Monsieur Alexander.

[Texte]

Mr. Alexander: Have you passed all the combines bit and everything else?

The Chairman: Yes, we have, Mr. Alexander.

Mr. Alexander: Pardon me. That is what one get's for being late.

The Chairman: We will adjourn until 9:30 a.m. tomorrow.

[Interprétation]

M. Alexander: Avez-vous étudié toutes questions relatives aux coalitions et tous les autres sujets?

Le président: Oui, monsieur Alexander.

M. Alexander: Excusez-moi. Je suis bien payé de mon retard.

Le président: Nous allons ajourner jusqu'à neuf heures et demie demain matin.

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